

AMENDED IN ASSEMBLY JUNE 7, 2011

AMENDED IN SENATE APRIL 12, 2011

AMENDED IN SENATE MARCH 30, 2011

AMENDED IN SENATE MARCH 15, 2011

SENATE BILL

No. 146

Introduced by Senator Wyland

February 1, 2011

An act to amend Sections 25, 27, 29, 32, 680.5, 801, 801.1, 802, 805, 809, 4990.20, and 4999.120 of, and to add Article 7 (commencing with Section 4999.123) to Chapter 16 of Division 2 of, the Business and Professions Code, to amend Sections 43.7, 43.8, 43.93, and 43.95 of the Civil Code, to amend Section 13401.5 of the Corporations Code, to amend Section 66085 of the Education Code, to amend Sections 795, 1010, 1014, and 1157 of the Evidence Code, to amend Sections 3202, 6924, and 6929 of the Family Code, to amend Sections 1277, 1348.8, 1367.26, 1373, 1373.8, 1373.95, 123105, 123115, and 124260 of the Health and Safety Code, to amend Sections 10133.55, 10176, 10176.7, 10177, and 10177.8 of the Insurance Code, to amend Section 11165.7 of the Penal Code, and to amend Sections 4514, 5256.1, 5328, 5328.04, 5696.5, 5751, 5751.2, and 15610.37 of the Welfare and Institutions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 146, as amended, Wyland. Healing arts: professional clinical counselors.

Existing law, the Licensed Professional Clinical Counselor Act, provides for the licensure and regulation of professional clinical counselors by the Board of Behavioral Sciences. Existing law also

governs the regulation of clinical counselor trainees and clinical counselor interns. A violation of the act is punishable as a crime.

This bill would make changes to various provisions concerning the practice of professional clinical counselors, clinical counselor trainees, and clinical counselor interns, including, but not limited to, provisions relating to education and training and licensure fees. The bill would authorize the formation of professional clinical counselor corporations for purposes of rendering professional services, subject to specified requirements. The bill would make conforming changes to the Moscone-Knox Professional Corporation Act and would authorize professional clinical counselors to be shareholders, officers, directors, or professional employees of other professional corporations, as specified. The bill would provide that a violation of these provisions constitutes a violation of the Licensed Professional Clinical Counselor Act, the violation of which is punishable as a crime, thereby imposing a state-mandated local program.

Existing law imposes specified fees on applicants for licensure as professional clinical counselors and registration as clinical counselor interns, including examination fees.

This bill would impose additional fees on these applicants, licensees, and registrants for the rescoring of examinations of a license or for replacement or issuance of a certificate or letter of good standing.

Existing law requires certain licensees to complete training in human sexuality and authorizes the board to adopt education and training for licensees related to chemical dependency and the assessment and treatment of AIDS.

This bill would extend the application of these provisions to professional clinical counselors.

Existing law requires a health care practitioner to communicate to a patient his or her name, license type, and highest level of academic degree in writing or in a prominent display in an area visible to patients in his or her office. Existing law exempts from these requirements certain health care practitioners.

This bill would exempt professional clinical counselors from those requirements.

Existing law requires the board to provide on the Internet information regarding the status of every license issued by the board.

This bill would require the board to disclose information on licensed professional clinical counselors.

Existing law requires insurers that provide liability insurance to certain licensees, and state or local governmental agencies that self insure those licensees, to report to the board certain settlement or arbitration awards. Existing law requires certain licensees to report to the board certain settlements, judgments, or arbitration awards. The failure of a licensee to report this information constitutes a crime subject to specified fines.

This bill would extend the application of these provisions to professional clinical counselors. By expanding a crime, the bill would impose a state-mandated local program.

Existing law establishes a peer review process for certain healing arts licensees and requires peer review bodies to review licensee conduct under specified circumstances. The willful failure of a peer review body to make specified reports is punishable as a crime.

This bill would apply these provisions to professional clinical counselors and set forth the criteria for the establishment of a peer review body, as specified. Because the willful failure of such a peer review body to make specified reports would be punishable as a crime, the bill would impose a state-mandated local program.

Existing law provides that there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, certain professional societies or its members for any act performed within the scope of the functions of that professional society or peer review or for the operation of a referral service, as specified.

This bill would extend the application of these provisions to a professional society consisting of professional clinical counselors and members of that society.

Existing law provides a cause of action against a psychotherapist, as defined, for injury caused by sexual contact with the psychotherapist.

This bill would extend the application of that cause of action to professional clinical counselors and registered clinical counselor interns or trainees, and their patients.

Existing law requests that the California State University, the University of California, and the California Community Colleges develop standards and guidelines for curriculum in gerontology, nursing, social work, psychology, marriage and family therapy, and rehabilitation therapies.

This bill would add to that requested curriculum professional clinical counseling.

Existing law makes admissible in a criminal proceeding the testimony of a witness who has previously undergone hypnosis for the purpose

of recalling events that are the subject of the witness's testimony, if specified conditions are met, including that the hypnosis was performed by a licensed physician and surgeon, psychologist, licensed clinical social worker, or a licensed marriage and family therapist experienced in the use of hypnosis.

This bill would make admissible the testimony from a witness who has undergone hypnosis by a professional clinical counselor.

Existing law provides that a patient has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between a patient and his or her psychotherapist, as defined.

This bill would extend the patient-psychotherapist privilege to confidential communications made between a patient and his or her professional clinical counselor, a registered clinical counselor intern or trainee, or a professional clinical counselor corporation. The bill would make a technical change to provisions that apply to associate clinical social workers.

Existing law provides that the proceedings and records of organized committees of healing arts professions or of a peer review body are not subject to discovery, except as specified.

This bill would provide that the proceedings and records of committees or peer review bodies of professional clinical counselors are not subject to discovery, except as specified.

Existing law authorizes the family law division of the superior court to contract with eligible providers of supervised visitation and exchange services, education, and group counseling to provide services.

This bill would authorize the family law division to contract with professional clinical counselors for those services.

Existing law sets forth the provisions that govern the provision of mental health treatment or counseling services and residential shelter services by professional persons, as defined.

This bill would extend the application of those provisions to professional clinical counselors and clinical counselor interns.

Existing law prohibits the licensure requirements of healing arts personnel in the state and other governmental health facilities licensed by the state from being any less than those of professional personnel in health facilities under private ownership, subject to specified waiver provisions.

This bill would extend the application of those provisions to professional clinical counselors who work in those facilities.

Existing law, the Knox-Keene Health Care Service Act of 1975 (Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of its provisions a crime. Existing law requires a health care service plan that provides, operates, or contracts for telephone medical advice services to ensure that the staff providing those services are properly licensed, as specified.

This bill would require a health care service plan that provides telephone medical advice services to ensure that any professional clinical counselors providing those services are licensed. Because a willful violation of these provisions would be punishable as a crime, the bill would impose a state-mandated local program.

Existing law requires a health care service plan to provide to an enrollee or prospective enrollee, upon request, a list of contracting providers within the enrollee's or prospective enrollee's general geographic area.

This bill would require a health care service plan to make that information available with regard to contracting providers who are professional clinical counselors. Because a willful violation of these provisions would be punishable as a crime, the bill would impose a state-mandated local program.

Under existing law, a health care service plan may not prohibit an enrollee from selecting certain healing art licensees for mental health services. Existing law also sets forth provisions that apply to health care service plan contracts or health insurance policies that are written or issued for delivery outside of California and where benefits are provided within the scope of practice of certain healing arts licensees.

This bill would add professional clinical counselors to the list of healing arts licensees in those provisions and would make similar changes to provisions that apply to insurance carriers. Because a willful violation of these provisions under the Knox-Keene Act would be punishable as a crime, the bill would impose a state-mandated local program.

Existing law sets forth provisions governing patient records and the responsibilities and duties of health care providers, as defined, with regard to those records, and as applied to other healing arts licensees when practicing at institutions for the developmentally disabled or mental hospitals.

This bill would apply the provisions that govern patient records to professional clinical counselors and clinical counselor interns.

Existing law requires a person who provides mental health services in local mental health facilities to be licensed. Existing law allows that licensure requirement to be waived in local facilities for psychologists, clinical social workers, and marriage and family therapists who are gaining the experience required for licensure.

This bill would apply those waiver provisions to the profession of clinical counseling.

Under the Child Abuse Neglect and Reporting Act, certain persons are mandated reporters, as defined. Failure of a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor.

This bill would make professional clinical counselors, clinical counselor interns, and clinical counselor trainees mandated reporters. By expanding a crime, the bill would impose a state-mandated local program.

Existing law generally regulates the provision of community mental health services for the mentally disordered in every county. Existing law authorizes the establishment of regional, secure facilities, which are designed for the commitment and ongoing treatment of seriously emotionally disturbed minors who have been adjudged wards of the juvenile court. Among other things, existing law sets forth staffing requirements for the opening of one of these regional facilities, including requiring that the staff include a pediatrician, dentist, and marriage and family therapist, on an as-needed basis.

This bill would revise the staffing requirements for a regional facility to include a marriage and family therapist or professional clinical counselor, or both, on an as-needed basis. The bill would also authorize the position of director of local mental health services to be a professional clinical counselor and would make other conforming changes to the certification review provisions.

This bill would make other conforming changes and enact related provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25 of the Business and Professions Code
2 is amended to read:

3 25. Any person applying for a license, registration, or the first
4 renewal of a license, after the effective date of this section, as a
5 licensed marriage and family therapist, a licensed clinical social
6 worker, a licensed psychologist, or a licensed professional clinical
7 counselor shall, in addition to any other requirements, show by
8 evidence satisfactory to the agency regulating the business or
9 profession, that he or she has completed training in human sexuality
10 as a condition of licensure. The training shall be creditable toward
11 continuing education requirements as deemed appropriate by the
12 agency regulating the business or profession, and the course shall
13 not exceed more than 50 contact hours.

14 The Board of Psychology shall exempt from the requirements
15 of this section any persons whose field of practice is such that they
16 are not likely to have use for this training.

17 “Human sexuality” as used in this section means the study of a
18 human being as a sexual being and how he or she functions with
19 respect thereto.

20 The content and length of the training shall be determined by
21 the administrative agency regulating the business or profession
22 and the agency shall proceed immediately upon the effective date
23 of this section to determine what training, and the quality of staff
24 to provide the training, is available and shall report its
25 determination to the Legislature on or before July 1, 1977.

26 If a licensing board or agency proposes to establish a training
27 program in human sexuality, the board or agency shall first consult
28 with other licensing boards or agencies that have established or
29 propose to establish a training program in human sexuality to
30 ensure that the programs are compatible in scope and content.

31 SEC. 2. Section 27 of the Business and Professions Code is
32 amended to read:

33 27. (a) Each entity specified in subdivision (b) shall provide
34 on the Internet information regarding the status of every license
35 issued by that entity in accordance with the California Public
36 Records Act (Chapter 3.5 (commencing with Section 6250) of
37 Division 7 of Title 1 of the Government Code) and the Information
38 Practices Act of 1977 (Chapter 1 (commencing with Section 1798))

1 of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public
2 information to be provided on the Internet shall include information
3 on suspensions and revocations of licenses issued by the entity
4 and other related enforcement action taken by the entity relative
5 to persons, businesses, or facilities subject to licensure or regulation
6 by the entity. In providing information on the Internet, each entity
7 shall comply with the Department of Consumer Affairs Guidelines
8 for Access to Public Records. The information may not include
9 personal information, including home telephone number, date of
10 birth, or social security number. Each entity shall disclose a
11 licensee's address of record. However, each entity shall allow a
12 licensee to provide a post office box number or other alternate
13 address, instead of his or her home address, as the address of
14 record. This section shall not preclude an entity from also requiring
15 a licensee, who has provided a post office box number or other
16 alternative mailing address as his or her address of record, to
17 provide a physical business address or residence address only for
18 the entity's internal administrative use and not for disclosure as
19 the licensee's address of record or disclosure on the Internet.

20 (b) Each of the following entities within the Department of
21 Consumer Affairs shall comply with the requirements of this
22 section:

23 (1) The Acupuncture Board shall disclose information on its
24 licensees.

25 (2) The Board of Behavioral Sciences shall disclose information
26 on its licensees, including marriage and family therapists, licensed
27 clinical social workers, licensed educational psychologists, and
28 licensed professional clinical counselors.

29 (3) The Dental Board of California shall disclose information
30 on its licensees.

31 (4) The State Board of Optometry shall disclose information
32 regarding certificates of registration to practice optometry,
33 statements of licensure, optometric corporation registrations, branch
34 office licenses, and fictitious name permits of its licensees.

35 (5) The Board for Professional Engineers and Land Surveyors
36 shall disclose information on its registrants and licensees.

37 (6) The Structural Pest Control Board shall disclose information
38 on its licensees, including applicators, field representatives, and
39 operators in the areas of fumigation, general pest and wood

1 destroying pests and organisms, and wood roof cleaning and
2 treatment.

3 (7) The Bureau of Automotive Repair shall disclose information
4 on its licensees, including auto repair dealers, smog stations, lamp
5 and brake stations, smog check technicians, and smog inspection
6 certification stations.

7 (8) The Bureau of Electronic and Appliance Repair shall disclose
8 information on its licensees, including major appliance repair
9 dealers, combination dealers (electronic and appliance), electronic
10 repair dealers, service contract sellers, and service contract
11 administrators.

12 (9) The Cemetery and Funeral Bureau shall disclose information
13 on its licensees, including cemetery brokers, cemetery salespersons,
14 cemetery managers, crematory managers, cemetery authorities,
15 crematories, cremated remains disposers, embalmers, funeral
16 establishments, and funeral directors.

17 (10) The Professional Fiduciaries Bureau shall disclose
18 information on its licensees.

19 (11) The Contractors' State License Board shall disclose
20 information on its licensees in accordance with Chapter 9
21 (commencing with Section 7000) of Division 3. In addition to
22 information related to licenses as specified in subdivision (a), the
23 board shall also disclose information provided to the board by the
24 Labor Commissioner pursuant to Section 98.9 of the Labor Code.

25 (12) The Board of Psychology shall disclose information on its
26 licensees, including psychologists, psychological assistants, and
27 registered psychologists.

28 (13) The Bureau for Private Postsecondary Education shall
29 disclose information on private postsecondary institutions under
30 its jurisdiction, including disclosure of notices to comply issued
31 pursuant to Section 94935 of the Education Code.

32 (c) "Internet" for the purposes of this section has the meaning
33 set forth in paragraph (6) of subdivision (e) of Section 17538.

34 SEC. 3. Section 29 of the Business and Professions Code is
35 amended to read:

36 29. (a) The Board of Psychology and the Board of Behavioral
37 Sciences shall consider adoption of continuing education
38 requirements including training in the area of recognizing chemical
39 dependency and early intervention for all persons applying for

1 renewal of a license as a psychologist, clinical social worker,
2 marriage and family therapist, or professional clinical counselor.

3 (b) Prior to the adoption of any regulations imposing continuing
4 education relating to alcohol and other chemical dependency, the
5 boards are urged to consider coursework to include, but not
6 necessarily be limited to, the following topics:

7 (1) Historical and contemporary perspectives on alcohol and
8 other drug abuse.

9 (2) Extent of the alcohol and drug abuse epidemic and its effects
10 on the individual, family, and community.

11 (3) Recognizing the symptoms of alcoholism and drug addiction.

12 (4) Making appropriate interpretations, interventions, and
13 referrals.

14 (5) Recognizing and intervening with affected family members.

15 (6) Learning about current programs of recovery, such as 12
16 step programs, and how therapists can effectively utilize these
17 programs.

18 SEC. 4. Section 32 of the Business and Professions Code is
19 amended to read:

20 32. (a) The Legislature finds that there is a need to ensure that
21 professionals of the healing arts who have or intend to have
22 significant contact with patients who have, or are at risk to be
23 exposed to, acquired immune deficiency syndrome (AIDS) are
24 provided with training in the form of continuing education
25 regarding the characteristics and methods of assessment and
26 treatment of the condition.

27 (b) A board vested with the responsibility of regulating the
28 following licensees shall consider including training regarding the
29 characteristics and method of assessment and treatment of acquired
30 immune deficiency syndrome (AIDS) in any continuing education
31 or training requirements for those licensees: chiropractors, medical
32 laboratory technicians, dentists, dental hygienists, dental assistants,
33 physicians and surgeons, podiatrists, registered nurses, licensed
34 vocational nurses, psychologists, physician assistants, respiratory
35 therapists, acupuncturists, marriage and family therapists, licensed
36 educational psychologists, clinical social workers, and professional
37 clinical counselors.

38 SEC. 5. Section 680.5 of the Business and Professions Code
39 is amended to read:

680.5. (a) (1) A health care practitioner licensed under Division 2 (commencing with Section 500) shall communicate to a patient his or her name, state-granted practitioner license type, and highest level of academic degree, by one or both of the following methods:

(A) In writing at the patient's initial office visit.

(B) In a prominent display in an area visible to patients in his or her office.

(2) An individual licensed under Chapter 6 (commencing with Section 2700) or Chapter 9 (commencing with Section 4000) is not required to disclose the highest level of academic degree he or she holds.

(b) A person licensed under Chapter 5 (commencing with Section 2000) or under the Osteopathic Act, who is certified by (1) an American Board of Medical Specialties member board, (2) a board or association with requirements equivalent to a board described in paragraph (1) approved by that person's medical licensing authority, or (3) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in the person's specialty or subspecialty, shall disclose the name of the board or association by either method described in subdivision (a).

(c) A health care practitioner who chooses to disclose the information required by subdivisions (a) and (b) pursuant to subparagraph (A) of paragraph (1) of subdivision (a) shall present that information in at least 24-point type in the following format:

HEALTH CARE PRACTITIONER INFORMATION

1. Name and license..... .
2. Highest level of academic degree..... .
3. Board certification (ABMS/MBC)..... .

(d) This section shall not apply to the following health care practitioners:

(1) A person who provides professional medical services to enrollees of a health care service plan that exclusively contracts with a single medical group in a specific geographic area to provide or arrange for professional medical services for the enrollees of the plan.

1 (2) A person who works in a facility licensed under Section
2 1250 of the Health and Safety Code or in a clinical laboratory
3 licensed under Section 1265.

4 (3) A person licensed under Chapter 3 (commencing with
5 Section 1200), Chapter 7.5 (commencing with Section 3300),
6 Chapter 8.3 (commencing with Section 3700), Chapter 11
7 (commencing with Section 4800), Chapter 13 (commencing with
8 Section 4980), ~~or~~ Chapter 14 (commencing with Section 4990.1),
9 *or Chapter 16 (commencing with Section 4999.10).*

10 (e) A health care practitioner, who provides information
11 regarding health care services on an Internet Web site that is
12 directly controlled or administered by that health care practitioner
13 or his or her office personnel, shall prominently display on that
14 Internet Web site the information required by this section.

15 ~~SEC. 5.~~

16 *SEC. 6.* Section 801 of the Business and Professions Code is
17 amended to read:

18 801. (a) Except as provided in Section 801.01 and subdivisions
19 (b), (c), and (d) of this section, every insurer providing professional
20 liability insurance to a person who holds a license, certificate, or
21 similar authority from or under any agency specified in subdivision
22 (a) of Section 800 shall send a complete report to that agency as
23 to any settlement or arbitration award over three thousand dollars
24 (\$3,000) of a claim or action for damages for death or personal
25 injury caused by that person's negligence, error, or omission in
26 practice, or by his or her rendering of unauthorized professional
27 services. The report shall be sent within 30 days after the written
28 settlement agreement has been reduced to writing and signed by
29 all parties thereto or within 30 days after service of the arbitration
30 award on the parties.

31 (b) Every insurer providing professional liability insurance to
32 a person licensed pursuant to Chapter 13 (commencing with
33 Section 4980), Chapter 14 (commencing with Section 4990), or
34 Chapter 16 (commencing with Section 4999.10) shall send a
35 complete report to the Board of Behavioral Sciences as to any
36 settlement or arbitration award over ten thousand dollars (\$10,000)
37 of a claim or action for damages for death or personal injury caused
38 by that person's negligence, error, or omission in practice, or by
39 his or her rendering of unauthorized professional services. The
40 report shall be sent within 30 days after the written settlement

1 agreement has been reduced to writing and signed by all parties
2 thereto or within 30 days after service of the arbitration award on
3 the parties.

4 (c) Every insurer providing professional liability insurance to
5 a dentist licensed pursuant to Chapter 4 (commencing with Section
6 1600) shall send a complete report to the Dental Board of
7 California as to any settlement or arbitration award over ten
8 thousand dollars (\$10,000) of a claim or action for damages for
9 death or personal injury caused by that person's negligence, error,
10 or omission in practice, or rendering of unauthorized professional
11 services. The report shall be sent within 30 days after the written
12 settlement agreement has been reduced to writing and signed by
13 all parties thereto or within 30 days after service of the arbitration
14 award on the parties.

15 (d) Every insurer providing liability insurance to a veterinarian
16 licensed pursuant to Chapter 11 (commencing with Section 4800)
17 shall send a complete report to the Veterinary Medical Board of
18 any settlement or arbitration award over ten thousand dollars
19 (\$10,000) of a claim or action for damages for death or injury
20 caused by that person's negligence, error, or omission in practice,
21 or rendering of unauthorized professional service. The report shall
22 be sent within 30 days after the written settlement agreement has
23 been reduced to writing and signed by all parties thereto or within
24 30 days after service of the arbitration award on the parties.

25 (e) The insurer shall notify the claimant, or if the claimant is
26 represented by counsel, the insurer shall notify the claimant's
27 attorney, that the report required by subdivision (a), (b), or (c) has
28 been sent to the agency. If the attorney has not received this notice
29 within 45 days after the settlement was reduced to writing and
30 signed by all of the parties, the arbitration award was served on
31 the parties, or the date of entry of the civil judgment, the attorney
32 shall make the report to the agency.

33 (f) Notwithstanding any other provision of law, no insurer shall
34 enter into a settlement without the written consent of the insured,
35 except that this prohibition shall not void any settlement entered
36 into without that written consent. The requirement of written
37 consent shall only be waived by both the insured and the insurer.
38 This section shall only apply to a settlement on a policy of
39 insurance executed or renewed on or after January 1, 1971.

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 801.1 of the Business and Professions Code
3 is amended to read:

4 801.1. (a) Every state or local governmental agency that
5 self-insures a person who holds a license, certificate, or similar
6 authority from or under any agency specified in subdivision (a) of
7 Section 800 (except a person licensed pursuant to Chapter 3
8 (commencing with Section 1200) or Chapter 5 (commencing with
9 Section 2000) or the Osteopathic Initiative Act) shall send a
10 complete report to that agency as to any settlement or arbitration
11 award over three thousand dollars (\$3,000) of a claim or action
12 for damages for death or personal injury caused by that person's
13 negligence, error, or omission in practice, or rendering of
14 unauthorized professional services. The report shall be sent within
15 30 days after the written settlement agreement has been reduced
16 to writing and signed by all parties thereto or within 30 days after
17 service of the arbitration award on the parties.

18 (b) Every state or local governmental agency that self-insures
19 a person licensed pursuant to Chapter 13 (commencing with
20 Section 4980), Chapter 14 (commencing with Section 4990), or
21 Chapter 16 (commencing with Section 4999.10) shall send a
22 complete report to the Board of Behavioral Science Examiners as
23 to any settlement or arbitration award over ten thousand dollars
24 (\$10,000) of a claim or action for damages for death or personal
25 injury caused by that person's negligence, error, or omission in
26 practice, or rendering of unauthorized professional services. The
27 report shall be sent within 30 days after the written settlement
28 agreement has been reduced to writing and signed by all parties
29 thereto or within 30 days after service of the arbitration award on
30 the parties.

31 ~~SEC. 7.~~

32 *SEC. 8.* Section 802 of the Business and Professions Code is
33 amended to read:

34 802. (a) Every settlement, judgment, or arbitration award over
35 three thousand dollars (\$3,000) of a claim or action for damages
36 for death or personal injury caused by negligence, error or omission
37 in practice, or by the unauthorized rendering of professional
38 services, by a person who holds a license, certificate, or other
39 similar authority from an agency specified in subdivision (a) of
40 Section 800 (except a person licensed pursuant to Chapter 3

(commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement, judgment, or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10), respectively, who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the

1 person or his or her counsel, with a copy of the communication to
2 be sent to the claimant through his or her counsel if he or she is
3 so represented, or directly if he or she is not. If, within 45 days of
4 the conclusion of the written settlement agreement or service of
5 the judgment or arbitration award on the parties, counsel for the
6 claimant (or if he or she is not represented by counsel, the claimant
7 himself or herself) has not received a copy of the report, he or she
8 shall himself or herself make a complete report. Failure of the
9 marriage and family therapist, clinical social worker, or
10 professional clinical counselor or claimant (or, if represented by
11 counsel, his or her counsel) to comply with this section is a public
12 offense punishable by a fine of not less than fifty dollars (\$50) nor
13 more than five hundred dollars (\$500). Knowing and intentional
14 failure to comply with this section, or conspiracy or collusion not
15 to comply with this section or to hinder or impede any other person
16 in that compliance, is a public offense punishable by a fine of not
17 less than five thousand dollars (\$5,000) nor more than fifty
18 thousand dollars (\$50,000).

19 ~~SEC. 8.~~

20 *SEC. 9.* Section 805 of the Business and Professions Code is
21 amended to read:

22 805. (a) As used in this section, the following terms have the
23 following definitions:

24 (1) (A) “Peer review” means both of the following:

25 (i) A process in which a peer review body reviews the basic
26 qualifications, staff privileges, employment, medical outcomes,
27 or professional conduct of licentiates to make recommendations
28 for quality improvement and education, if necessary, in order to
29 do either or both of the following:

30 (I) Determine whether a licentiate may practice or continue to
31 practice in a health care facility, clinic, or other setting providing
32 medical services, and, if so, to determine the parameters of that
33 practice.

34 (II) Assess and improve the quality of care rendered in a health
35 care facility, clinic, or other setting providing medical services.

36 (ii) Any other activities of a peer review body as specified in
37 subparagraph (B).

38 (B) “Peer review body” includes:

39 (i) A medical or professional staff of any health care facility or
40 clinic licensed under Division 2 (commencing with Section 1200)

1 of the Health and Safety Code or of a facility certified to participate
2 in the federal Medicare Program as an ambulatory surgical center.

3 (ii) A health care service plan licensed under Chapter 2.2
4 (commencing with Section 1340) of Division 2 of the Health and
5 Safety Code or a disability insurer that contracts with licentiates
6 to provide services at alternative rates of payment pursuant to
7 Section 10133 of the Insurance Code.

8 (iii) Any medical, psychological, marriage and family therapy,
9 social work, professional clinical counselor, dental, or podiatric
10 professional society having as members at least 25 percent of the
11 eligible licentiates in the area in which it functions (which must
12 include at least one county), which is not organized for profit and
13 which has been determined to be exempt from taxes pursuant to
14 Section 23701 of the Revenue and Taxation Code.

15 (iv) A committee organized by any entity consisting of or
16 employing more than 25 licentiates of the same class that functions
17 for the purpose of reviewing the quality of professional care
18 provided by members or employees of that entity.

19 (2) "Licentiate" means a physician and surgeon, doctor of
20 podiatric medicine, clinical psychologist, marriage and family
21 therapist, clinical social worker, professional clinical counselor,
22 or dentist. "Licentiate" also includes a person authorized to practice
23 medicine pursuant to Section 2113 or 2168.

24 (3) "Agency" means the relevant state licensing agency having
25 regulatory jurisdiction over the licentiates listed in paragraph (2).

26 (4) "Staff privileges" means any arrangement under which a
27 licentiate is allowed to practice in or provide care for patients in
28 a health facility. Those arrangements shall include, but are not
29 limited to, full staff privileges, active staff privileges, limited staff
30 privileges, auxiliary staff privileges, provisional staff privileges,
31 temporary staff privileges, courtesy staff privileges, locum tenens
32 arrangements, and contractual arrangements to provide professional
33 services, including, but not limited to, arrangements to provide
34 outpatient services.

35 (5) "Denial or termination of staff privileges, membership, or
36 employment" includes failure or refusal to renew a contract or to
37 renew, extend, or reestablish any staff privileges, if the action is
38 based on medical disciplinary cause or reason.

39 (6) "Medical disciplinary cause or reason" means that aspect
40 of a licentiate's competence or professional conduct that is

1 reasonably likely to be detrimental to patient safety or to the
2 delivery of patient care.

3 (7) “805 report” means the written report required under
4 subdivision (b).

5 (b) The chief of staff of a medical or professional staff or other
6 chief executive officer, medical director, or administrator of any
7 peer review body and the chief executive officer or administrator
8 of any licensed health care facility or clinic shall file an 805 report
9 with the relevant agency within 15 days after the effective date on
10 which any of the following occur as a result of an action of a peer
11 review body:

12 (1) A licentiate’s application for staff privileges or membership
13 is denied or rejected for a medical disciplinary cause or reason.

14 (2) A licentiate’s membership, staff privileges, or employment
15 is terminated or revoked for a medical disciplinary cause or reason.

16 (3) Restrictions are imposed, or voluntarily accepted, on staff
17 privileges, membership, or employment for a cumulative total of
18 30 days or more for any 12-month period, for a medical disciplinary
19 cause or reason.

20 (c) If a licentiate takes any action listed in paragraph (1), (2),
21 or (3) after receiving notice of a pending investigation initiated
22 for a medical disciplinary cause or reason or after receiving notice
23 that his or her application for membership or staff privileges is
24 denied or will be denied for a medical disciplinary cause or reason,
25 the chief of staff of a medical or professional staff or other chief
26 executive officer, medical director, or administrator of any peer
27 review body and the chief executive officer or administrator of
28 any licensed health care facility or clinic where the licentiate is
29 employed or has staff privileges or membership or where the
30 licentiate applied for staff privileges or membership, or sought the
31 renewal thereof, shall file an 805 report with the relevant agency
32 within 15 days after the licentiate takes the action.

33 (1) Resigns or takes a leave of absence from membership, staff
34 privileges, or employment.

35 (2) Withdraws or abandons his or her application for staff
36 privileges or membership.

37 (3) Withdraws or abandons his or her request for renewal of
38 staff privileges or membership.

39 (d) For purposes of filing an 805 report, the signature of at least
40 one of the individuals indicated in subdivision (b) or (c) on the

1 completed form shall constitute compliance with the requirement
2 to file the report.

3 (e) An 805 report shall also be filed within 15 days following
4 the imposition of summary suspension of staff privileges,
5 membership, or employment, if the summary suspension remains
6 in effect for a period in excess of 14 days.

7 (f) A copy of the 805 report, and a notice advising the licentiate
8 of his or her right to submit additional statements or other
9 information, electronically or otherwise, pursuant to Section 800,
10 shall be sent by the peer review body to the licentiate named in
11 the report. The notice shall also advise the licentiate that
12 information submitted electronically will be publicly disclosed to
13 those who request the information.

14 The information to be reported in an 805 report shall include the
15 name and license number of the licentiate involved, a description
16 of the facts and circumstances of the medical disciplinary cause
17 or reason, and any other relevant information deemed appropriate
18 by the reporter.

19 A supplemental report shall also be made within 30 days
20 following the date the licentiate is deemed to have satisfied any
21 terms, conditions, or sanctions imposed as disciplinary action by
22 the reporting peer review body. In performing its dissemination
23 functions required by Section 805.5, the agency shall include a
24 copy of a supplemental report, if any, whenever it furnishes a copy
25 of the original 805 report.

26 If another peer review body is required to file an 805 report, a
27 health care service plan is not required to file a separate report
28 with respect to action attributable to the same medical disciplinary
29 cause or reason. If the Medical Board of California or a licensing
30 agency of another state revokes or suspends, without a stay, the
31 license of a physician and surgeon, a peer review body is not
32 required to file an 805 report when it takes an action as a result of
33 the revocation or suspension.

34 (g) The reporting required by this section shall not act as a
35 waiver of confidentiality of medical records and committee reports.
36 The information reported or disclosed shall be kept confidential
37 except as provided in subdivision (c) of Section 800 and Sections
38 803.1 and 2027, provided that a copy of the report containing the
39 information required by this section may be disclosed as required

1 by Section 805.5 with respect to reports received on or after
2 January 1, 1976.

3 (h) The Medical Board of California, the Osteopathic Medical
4 Board of California, and the Dental Board of California shall
5 disclose reports as required by Section 805.5.

6 (i) An 805 report shall be maintained electronically by an agency
7 for dissemination purposes for a period of three years after receipt.

8 (j) No person shall incur any civil or criminal liability as the
9 result of making any report required by this section.

10 (k) A willful failure to file an 805 report by any person who is
11 designated or otherwise required by law to file an 805 report is
12 punishable by a fine not to exceed one hundred thousand dollars
13 (\$100,000) per violation. The fine may be imposed in any civil or
14 administrative action or proceeding brought by or on behalf of any
15 agency having regulatory jurisdiction over the person regarding
16 whom the report was or should have been filed. If the person who
17 is designated or otherwise required to file an 805 report is a
18 licensed physician and surgeon, the action or proceeding shall be
19 brought by the Medical Board of California. The fine shall be paid
20 to that agency but not expended until appropriated by the
21 Legislature. A violation of this subdivision may constitute
22 unprofessional conduct by the licensee. A person who is alleged
23 to have violated this subdivision may assert any defense available
24 at law. As used in this subdivision, “willful” means a voluntary
25 and intentional violation of a known legal duty.

26 (l) Except as otherwise provided in subdivision (k), any failure
27 by the administrator of any peer review body, the chief executive
28 officer or administrator of any health care facility, or any person
29 who is designated or otherwise required by law to file an 805
30 report, shall be punishable by a fine that under no circumstances
31 shall exceed fifty thousand dollars (\$50,000) per violation. The
32 fine may be imposed in any civil or administrative action or
33 proceeding brought by or on behalf of any agency having
34 regulatory jurisdiction over the person regarding whom the report
35 was or should have been filed. If the person who is designated or
36 otherwise required to file an 805 report is a licensed physician and
37 surgeon, the action or proceeding shall be brought by the Medical
38 Board of California. The fine shall be paid to that agency but not
39 expended until appropriated by the Legislature. The amount of the
40 fine imposed, not exceeding fifty thousand dollars (\$50,000) per

violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

~~SEC. 9.~~

SEC. 10. Section 809 of the Business and Professions Code is amended to read:

809. (a) The Legislature hereby finds and declares the following:

(1) In 1986, Congress enacted the federal Health Care Quality Improvement Act of 1986 (42 U.S.C. Sec. 11101 et seq.), to encourage physicians and surgeons to engage in effective professional peer review, but giving each state the opportunity to “opt-out” of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to “opt-out” of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) Peer review that is not conducted fairly results in harm to both patients and healing arts practitioners by limiting access to care.

1 (5) Peer review, fairly conducted, will aid the appropriate state
2 licensing boards in their responsibility to regulate and discipline
3 errant healing arts practitioners.

4 (6) To protect the health and welfare of the people of California,
5 it is the policy of the State of California to exclude, through the
6 peer review mechanism as provided for by California law, those
7 healing arts practitioners who provide substandard care or who
8 engage in professional misconduct, regardless of the effect of that
9 exclusion on competition.

10 (7) It is the intent of the Legislature that peer review of
11 professional health care services be done efficiently, on an ongoing
12 basis, and with an emphasis on early detection of potential quality
13 problems and resolutions through informal educational
14 interventions.

15 (8) Sections 809 to 809.8, inclusive, shall not affect the
16 respective responsibilities of the organized medical staff or the
17 governing body of an acute care hospital with respect to peer
18 review in the acute care hospital setting. It is the intent of the
19 Legislature that written provisions implementing Sections 809 to
20 809.8, inclusive, in the acute care hospital setting shall be included
21 in medical staff bylaws that shall be adopted by a vote of the
22 members of the organized medical staff and shall be subject to
23 governing body approval, which approval shall not be withheld
24 unreasonably.

25 (9) (A) The Legislature thus finds and declares that the laws
26 of this state pertaining to the peer review of healing arts
27 practitioners shall apply in lieu of Section 11101 and following of
28 Title 42 of the United States Code, because the laws of this state
29 provide a more careful articulation of the protections for both those
30 undertaking peer review activity and those subject to review, and
31 better integrate public and private systems of peer review.
32 Therefore, California exercises its right to opt out of specified
33 provisions of the federal Health Care Quality Improvement Act
34 relating to professional review actions, pursuant to Section
35 11111(c)(2)(B) of Title 42 of the United States Code. This election
36 shall not affect the availability of any immunity under California
37 law.

38 (B) The Legislature further declares that it is not the intent or
39 purpose of Sections 809 to 809.8, inclusive, to opt out of any

1 mandatory national data bank established pursuant to Section
2 11131 and following of Title 42 of the United States Code.

3 (b) For the purpose of this section and Sections 809.1 to 809.8,
4 inclusive, “healing arts practitioner” or “licentiate” means a
5 physician and surgeon, podiatrist, clinical psychologist, marriage
6 and family therapist, clinical social worker, professional clinical
7 counselor, or dentist; and “peer review body” means a peer review
8 body as specified in paragraph (1) of subdivision (a) of Section
9 805, and includes any designee of the peer review body.

10 ~~SEC. 10.~~

11 *SEC. 11.* Section 4990.20 of the Business and Professions Code
12 is amended to read:

13 4990.20. (a) The board may adopt rules and regulations as
14 necessary to administer and enforce the provisions of this chapter
15 and the other chapters it administers and enforces. The adoption,
16 amendment, or repeal of those rules and regulations shall be made
17 in accordance with Chapter 3.5 (commencing with Section 11340)
18 of Part 1 of Division 3 of Title 2 of the Government Code.

19 (b) The board may formulate and enforce rules and regulations
20 requiring the following:

21 (1) That the articles of incorporation or bylaws of a marriage
22 and family therapist corporation, a licensed clinical social worker
23 corporation, or a professional clinical counselor corporation include
24 a provision whereby the capital stock of that corporation owned
25 by a disqualified person, as defined in the Moscone-Knox
26 Professional Corporation Act (Part 4 (commencing with Section
27 13400) of Division 3 of Title 1 of the Corporations Code), or a
28 deceased person shall be sold to the corporation or to the remaining
29 shareholders of that corporation within the time that the rules and
30 regulations may provide.

31 (2) That a marriage and family therapist corporation, a licensed
32 clinical social worker corporation, or a professional clinical
33 counselor corporation shall provide adequate security by insurance
34 or otherwise for claims against it by its patients arising out of the
35 rendering of professional services.

36 ~~SEC. 11.~~

37 *SEC. 12.* Section 4999.120 of the Business and Professions
38 Code is amended to read:

39 4999.120. The board shall assess fees for the application for
40 and the issuance and renewal of licenses and for the registration

1 of interns to cover administrative and operating expenses of the
2 board related to this chapter. Fees assessed pursuant to this section
3 shall not exceed the following:

4 (a) The fee for the application for examination eligibility shall
5 be up to two hundred fifty dollars (\$250).

6 (b) The fee for the application for intern registration shall be up
7 to one hundred fifty dollars (\$150).

8 (c) The fee for the application for licensure shall be up to one
9 hundred eighty dollars (\$180).

10 (d) The fee for the jurisprudence and ethics examination required
11 by Section 4999.54 shall be up to one hundred fifty dollars (\$150).

12 (e) The fee for the examination described in subdivision (b) of
13 Section 4999.54 shall be up to one hundred dollars (\$100).

14 (f) The fee for the written examination shall be up to two
15 hundred fifty dollars (\$250).

16 (g) The fee for the issuance of a license shall be up to two
17 hundred fifty dollars (\$250).

18 (h) The fee for annual renewal of licenses issued pursuant to
19 Section 4999.54 shall be up to one hundred fifty dollars (\$150).

20 (i) The fee for annual renewal of an intern registration shall be
21 up to one hundred fifty dollars (\$150).

22 (j) The fee for two-year renewal of licenses shall be up to two
23 hundred fifty dollars (\$250).

24 (k) The fee for issuance of a retired license shall be forty dollars
25 (\$40).

26 (l) The fee for rescoring an examination shall be twenty dollars
27 (\$20).

28 (m) The fee for issuance of a replacement license or registration
29 shall be twenty dollars (\$20).

30 (n) The fee for issuance of a certificate or letter of good standing
31 shall be twenty-five dollars (\$25).

32 ~~SEC. 12.~~

33 *SEC. 13.* Article 7 (commencing with Section 4999.123) is
34 added to Chapter 16 of Division 2 of the Business and Professions
35 Code, to read:

36
37 Article 7. Professional Clinical Counselor Corporations

38
39 4999.123. A professional clinical counselor corporation is a
40 corporation that is authorized to render professional services, as

1 defined in Section 13401 of the Corporations Code, so long as that
2 corporation and its shareholders, officers, directors, and employees
3 who are rendering professional services and who are licensed
4 professional clinical counselors, marriage and family therapists,
5 physicians and surgeons, psychologists, licensed clinical social
6 workers, registered nurses, chiropractors, or acupuncturists, are in
7 compliance with the Moscone-Knox Professional Corporation Act
8 (Part 4 (commencing with Section 13400) of Division 3 of Title
9 1 of the Corporations Code), this article, and any other statute or
10 regulation pertaining to that corporation and the conduct of its
11 affairs. With respect to a professional clinical counselor
12 corporation, the term “governmental agency” in the Moscone-Knox
13 Professional Corporation Act (Part 4 (commencing with Section
14 13400) of Division 3 of Title 1 of the Corporations Code) shall be
15 construed to mean the Board of Behavioral Sciences.

16 4999.124. It shall constitute unprofessional conduct and a
17 violation of this chapter for any person licensed under this chapter
18 to violate, attempt to violate, directly or indirectly, or assist in, or
19 abet the violation of, or conspire to violate, any provision or term
20 of this article, the Moscone-Knox Professional Corporation Act
21 (Part 4 (commencing with Section 13400) of Division 3 of Title
22 1 of the Corporations Code), or any regulation adopted under those
23 laws.

24 4999.125. The name of a professional clinical counselor
25 corporation and any name or names under which it may be
26 rendering professional services shall contain the words “licensed
27 professional clinical counselor” or “professional clinical counselor”
28 and wording or abbreviations denoting a corporate existence. A
29 professional clinical counselor corporation that conducts business
30 under a fictitious business name shall not use any name that is
31 false, misleading, or deceptive, and shall inform each patient, prior
32 to commencement of treatment, that the business is conducted by
33 a professional clinical counselor corporation.

34 4999.126. Except as provided in Section 13403 of the
35 Corporations Code, each director, shareholder, and officer of a
36 professional clinical counselor corporation shall be a licensed
37 person, as defined in Section 13401 of the Corporations Code.

38 4999.127. The income of a professional clinical counselor
39 corporation attributable to professional services rendered while a
40 shareholder is a disqualified person, as defined in Section 13401

1 of the Corporations Code, shall not in any manner accrue to the
2 benefit of that shareholder or his or her shares in the professional
3 clinical counselor corporation.

4 4999.128. A professional clinical counselor corporation shall
5 not perform or fail to perform any act the performance of which,
6 or for which the failure to perform, would constitute unprofessional
7 conduct under any statute, rule, or regulation. In the conduct of its
8 practice, a professional clinical counselor corporation shall observe
9 and be bound by any statute, rule, or regulation that applies to a
10 licensed professional clinical counselor.

11 4999.129. The board may formulate and enforce any rule or
12 regulation to carry out the purposes and objectives of this article,
13 including as follows:

14 (a) Any rule or regulation that requires that the articles of
15 incorporation or bylaws of a professional clinical counselor
16 corporation shall include a provision that requires the capital stock
17 of the corporation owned by a disqualified person, as defined in
18 Section 13401 of the Corporations Code, or a deceased person to
19 be sold to the corporation or to the remaining shareholders of the
20 corporation within the timeframe that the rule or regulation
21 requires.

22 (b) Any rule or regulation that requires that a professional
23 clinical counselor corporation shall provide adequate security by
24 insurance or otherwise for claims against the corporation by its
25 patients arising out of the rendering of professional services.

26 ~~SEC. 13.~~

27 *SEC. 14.* Section 43.7 of the Civil Code is amended to read:

28 43.7. (a) There shall be no monetary liability on the part of,
29 and no cause of action for damages shall arise against, any member
30 of a duly appointed mental health professional quality assurance
31 committee that is established in compliance with Section 4070 of
32 the Welfare and Institutions Code, for any act or proceeding
33 undertaken or performed within the scope of the functions of the
34 committee which is formed to review and evaluate the adequacy,
35 appropriateness, or effectiveness of the care and treatment planned
36 for, or provided to, mental health patients in order to improve
37 quality of care by mental health professionals if the committee
38 member acts without malice, has made a reasonable effort to obtain
39 the facts of the matter as to which he or she acts, and acts in
40 reasonable belief that the action taken by him or her is warranted

1 by the facts known to him or her after the reasonable effort to
2 obtain facts.

3 (b) There shall be no monetary liability on the part of, and no
4 cause of action for damages shall arise against, any professional
5 society, any member of a duly appointed committee of a medical
6 specialty society, or any member of a duly appointed committee
7 of a state or local professional society, or duly appointed member
8 of a committee of a professional staff of a licensed hospital
9 (provided the professional staff operates pursuant to written bylaws
10 that have been approved by the governing board of the hospital),
11 for any act or proceeding undertaken or performed within the scope
12 of the functions of the committee which is formed to maintain the
13 professional standards of the society established by its bylaws, or
14 any member of any peer review committee whose purpose is to
15 review the quality of medical, dental, dietetic, chiropractic,
16 optometric, acupuncture, psychotherapy, or veterinary services
17 rendered by physicians and surgeons, dentists, dental hygienists,
18 podiatrists, registered dietitians, chiropractors, optometrists,
19 acupuncturists, veterinarians, marriage and family therapists,
20 professional clinical counselors, or psychologists, which committee
21 is composed chiefly of physicians and surgeons, dentists, dental
22 hygienists, podiatrists, registered dietitians, chiropractors,
23 optometrists, acupuncturists, veterinarians, marriage and family
24 therapists, professional clinical counselors, or psychologists for
25 any act or proceeding undertaken or performed in reviewing the
26 quality of medical, dental, dietetic, chiropractic, optometric,
27 acupuncture, psychotherapy, or veterinary services rendered by
28 physicians and surgeons, dentists, dental hygienists, podiatrists,
29 registered dietitians, chiropractors, optometrists, acupuncturists,
30 veterinarians, marriage and family therapists, professional clinical
31 counselors, or psychologists or any member of the governing board
32 of a hospital in reviewing the quality of medical services rendered
33 by members of the staff if the professional society, committee, or
34 board member acts without malice, has made a reasonable effort
35 to obtain the facts of the matter as to which he, she, or it acts, and
36 acts in reasonable belief that the action taken by him, her, or it is
37 warranted by the facts known to him, her, or it after the reasonable
38 effort to obtain facts. "Professional society" includes legal, medical,
39 psychological, dental, dental hygiene, dietetic, accounting,
40 optometric, acupuncture, podiatric, pharmaceutical, chiropractic,

1 physical therapist, veterinary, licensed marriage and family therapy,
2 licensed clinical social work, licensed professional clinical
3 counselor, and engineering organizations having as members at
4 least 25 percent of the eligible persons or licentiates in the
5 geographic area served by the particular society. However, if the
6 society has fewer than 100 members, it shall have as members at
7 least a majority of the eligible persons or licentiates in the
8 geographic area served by the particular society.

9 “Medical specialty society” means an organization having as
10 members at least 25 percent of the eligible physicians and surgeons
11 within a given professionally recognized medical specialty in the
12 geographic area served by the particular society.

13 (c) This section does not affect the official immunity of an
14 officer or employee of a public corporation.

15 (d) There shall be no monetary liability on the part of, and no
16 cause of action for damages shall arise against, any physician and
17 surgeon, podiatrist, or chiropractor who is a member of an
18 underwriting committee of an interindemnity or reciprocal or
19 interinsurance exchange or mutual company for any act or
20 proceeding undertaken or performed in evaluating physicians and
21 surgeons, podiatrists, or chiropractors for the writing of
22 professional liability insurance, or any act or proceeding undertaken
23 or performed in evaluating physicians and surgeons for the writing
24 of an interindemnity, reciprocal, or interinsurance contract as
25 specified in Section 1280.7 of the Insurance Code, if the evaluating
26 physician and surgeon, podiatrist, or chiropractor acts without
27 malice, has made a reasonable effort to obtain the facts of the
28 matter as to which he or she acts, and acts in reasonable belief that
29 the action taken by him or her is warranted by the facts known to
30 him or her after the reasonable effort to obtain the facts.

31 (e) This section shall not be construed to confer immunity from
32 liability on any quality assurance committee established in
33 compliance with Section 4070 of the Welfare and Institutions Code
34 or hospital. In any case in which, but for the enactment of the
35 preceding provisions of this section, a cause of action would arise
36 against a quality assurance committee established in compliance
37 with Section 4070 of the Welfare and Institutions Code or hospital,
38 the cause of action shall exist as if the preceding provisions of this
39 section had not been enacted.

~~SEC. 14.~~

SEC. 15. Section 43.8 of the Civil Code is amended to read:

43.8. (a) In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of that person to any hospital, hospital medical staff, veterinary hospital staff, professional society, medical, dental, podiatric, psychology, marriage and family therapy, professional clinical counselor, or veterinary school, professional licensing board or division, committee or panel of a licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under Section 12529 of the Government Code, peer review committee, quality assurance committees established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code, or underwriting committee described in Section 43.7 when the communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts.

(b) The immunities afforded by this section and by Section 43.7 shall not affect the availability of any absolute privilege that may be afforded by Section 47.

(c) Nothing in this section is intended in any way to affect the California Supreme Court's decision in *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, holding that subdivision (a) provides a qualified privilege.

~~SEC. 15.~~

SEC. 16. Section 43.93 of the Civil Code is amended to read:

43.93. (a) For the purposes of this section the following definitions are applicable:

(1) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a marriage and family therapist, a registered marriage and family therapist intern or trainee, an educational psychologist, an associate clinical social worker, a licensed clinical social worker, a professional clinical counselor, or a registered clinical counselor intern or trainee.

(3) “Sexual contact” means the touching of an intimate part of another person. “Intimate part” and “touching” have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.

(4) “Therapeutic relationship” exists during the time the patient or client is rendered professional service by the psychotherapist.

(5) “Therapeutic deception” means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient’s or former patient’s treatment.

(b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:

(1) During the period the patient was receiving psychotherapy from the psychotherapist.

(2) Within two years following termination of therapy.

(3) By means of therapeutic deception.

(c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.

(d) In an action for sexual contact, evidence of the plaintiff’s sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:

(1) The plaintiff claims damage to sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff’s conduct that are determined by the court to be relevant. The court’s order shall detail the information or conduct that is subject to discovery.

~~SEC. 16.~~

SEC. 17. Section 43.95 of the Civil Code is amended to read:

43.95. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by a professional society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of the society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by a professional society for providing a telephone information library available for use by the general public without charge. “Professional society” includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutical, chiropractic, veterinary, licensed marriage and family therapy, licensed clinical social work, professional clinical counselor, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society. “Professional society” also includes organizations with referral services that have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations that have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of the society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

1 (1) Where a disciplinary proceeding results in no disciplinary
2 action being taken against the professional to whom a member of
3 the public was referred.

4 (2) Where a period of three years has elapsed since the
5 professional to whom a member of the public was referred has
6 satisfied any terms, conditions, or sanctions imposed upon the
7 professional as disciplinary action; except that if the professional
8 is an attorney, there shall be no time limit on the duty to disclose.

9 ~~SEC. 17.~~

10 *SEC. 18.* Section 13401.5 of the Corporations Code is amended
11 to read:

12 13401.5. Notwithstanding subdivision (d) of Section 13401
13 and any other provision of law, the following licensed persons
14 may be shareholders, officers, directors, or professional employees
15 of the professional corporations designated in this section so long
16 as the sum of all shares owned by those licensed persons does not
17 exceed 49 percent of the total number of shares of the professional
18 corporation so designated herein, and so long as the number of
19 those licensed persons owning shares in the professional
20 corporation so designated herein does not exceed the number of
21 persons licensed by the governmental agency regulating the
22 designated professional corporation:

23 (a) Medical corporation.

24 (1) Licensed doctors of podiatric medicine.

25 (2) Licensed psychologists.

26 (3) Registered nurses.

27 (4) Licensed optometrists.

28 (5) Licensed marriage and family therapists.

29 (6) Licensed clinical social workers.

30 (7) Licensed physician assistants.

31 (8) Licensed chiropractors.

32 (9) Licensed acupuncturists.

33 (10) Naturopathic doctors.

34 (11) Licensed professional clinical counselors.

35 (b) Podiatric medical corporation.

36 (1) Licensed physicians and surgeons.

37 (2) Licensed psychologists.

38 (3) Registered nurses.

39 (4) Licensed optometrists.

40 (5) Licensed chiropractors.

- 1 (6) Licensed acupuncturists.
- 2 (7) Naturopathic doctors.
- 3 (c) Psychological corporation.
- 4 (1) Licensed physicians and surgeons.
- 5 (2) Licensed doctors of podiatric medicine.
- 6 (3) Registered nurses.
- 7 (4) Licensed optometrists.
- 8 (5) Licensed marriage and family therapists.
- 9 (6) Licensed clinical social workers.
- 10 (7) Licensed chiropractors.
- 11 (8) Licensed acupuncturists.
- 12 (9) Naturopathic doctors.
- 13 (10) Licensed professional clinical counselors.
- 14 (d) Speech-language pathology corporation.
- 15 (1) Licensed audiologists.
- 16 (e) Audiology corporation.
- 17 (1) Licensed speech-language pathologists.
- 18 (f) Nursing corporation.
- 19 (1) Licensed physicians and surgeons.
- 20 (2) Licensed doctors of podiatric medicine.
- 21 (3) Licensed psychologists.
- 22 (4) Licensed optometrists.
- 23 (5) Licensed marriage and family therapists.
- 24 (6) Licensed clinical social workers.
- 25 (7) Licensed physician assistants.
- 26 (8) Licensed chiropractors.
- 27 (9) Licensed acupuncturists.
- 28 (10) Naturopathic doctors.
- 29 (11) Licensed professional clinical counselors.
- 30 (g) Marriage and family therapist corporation.
- 31 (1) Licensed physicians and surgeons.
- 32 (2) Licensed psychologists.
- 33 (3) Licensed clinical social workers.
- 34 (4) Registered nurses.
- 35 (5) Licensed chiropractors.
- 36 (6) Licensed acupuncturists.
- 37 (7) Naturopathic doctors.
- 38 (8) Licensed professional clinical counselors.
- 39 (h) Licensed clinical social worker corporation.
- 40 (1) Licensed physicians and surgeons.

- 1 (2) Licensed psychologists.
- 2 (3) Licensed marriage and family therapists.
- 3 (4) Registered nurses.
- 4 (5) Licensed chiropractors.
- 5 (6) Licensed acupuncturists.
- 6 (7) Naturopathic doctors.
- 7 (8) Licensed professional clinical counselors.
- 8 (i) Physician assistants corporation.
- 9 (1) Licensed physicians and surgeons.
- 10 (2) Registered nurses.
- 11 (3) Licensed acupuncturists.
- 12 (4) Naturopathic doctors.
- 13 (j) Optometric corporation.
- 14 (1) Licensed physicians and surgeons.
- 15 (2) Licensed doctors of podiatric medicine.
- 16 (3) Licensed psychologists.
- 17 (4) Registered nurses.
- 18 (5) Licensed chiropractors.
- 19 (6) Licensed acupuncturists.
- 20 (7) Naturopathic doctors.
- 21 (k) Chiropractic corporation.
- 22 (1) Licensed physicians and surgeons.
- 23 (2) Licensed doctors of podiatric medicine.
- 24 (3) Licensed psychologists.
- 25 (4) Registered nurses.
- 26 (5) Licensed optometrists.
- 27 (6) Licensed marriage and family therapists.
- 28 (7) Licensed clinical social workers.
- 29 (8) Licensed acupuncturists.
- 30 (9) Naturopathic doctors.
- 31 (10) Licensed professional clinical counselors.
- 32 (l) Acupuncture corporation.
- 33 (1) Licensed physicians and surgeons.
- 34 (2) Licensed doctors of podiatric medicine.
- 35 (3) Licensed psychologists.
- 36 (4) Registered nurses.
- 37 (5) Licensed optometrists.
- 38 (6) Licensed marriage and family therapists.
- 39 (7) Licensed clinical social workers.
- 40 (8) Licensed physician assistants.

- (9) Licensed chiropractors.
- (10) Naturopathic doctors.
- (11) Licensed professional clinical counselors.
- (m) Naturopathic doctor corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed physician assistants.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Licensed physical therapists.
- (8) Licensed doctors of podiatric medicine.
- (9) Licensed marriage and family therapists.
- (10) Licensed clinical social workers.
- (11) Licensed optometrists.
- (12) Licensed professional clinical counselors.
- (n) Dental corporation.
- (1) Licensed physicians and surgeons.
- (2) Dental assistants.
- (3) Registered dental assistants.
- (4) Registered dental assistants in extended functions.
- (5) Registered dental hygienists.
- (6) Registered dental hygienists in extended functions.
- (7) Registered dental hygienists in alternative practice.
- (o) Professional clinical counselor corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Licensed clinical social workers.
- (4) Licensed marriage and family therapists.
- (5) Registered nurses.
- (6) Licensed chiropractors.
- (7) Licensed acupuncturists.
- (8) Naturopathic doctors.

~~SEC. 18.~~

SEC. 19. Section 66085 of the Education Code is amended to read:

66085. The Legislature requests that the Trustees of the California State University, the Regents of the University of California, and the Board of Governors of the California Community Colleges, in consultation with the California Council

1 on Gerontology and Geriatrics and other qualified groups or
2 individuals, develop standards and guidelines, based on standards
3 developed by the Association for Gerontology in Higher Education,
4 for the biological, social, and psychological aspects of aging for
5 professional degree programs at the associate, bachelor, and
6 graduate levels, including those programs in gerontology, nursing,
7 social work, psychology, marriage and family therapy, professional
8 clinical counseling, and the rehabilitation therapies. Nothing in
9 this article shall be construed to require any additional coursework
10 requirements for professional degree programs.

11 ~~SEC. 19.~~

12 *SEC. 20.* Section 795 of the Evidence Code is amended to read:

13 795. (a) The testimony of a witness is not inadmissible in a
14 criminal proceeding by reason of the fact that the witness has
15 previously undergone hypnosis for the purpose of recalling events
16 that are the subject of the witness's testimony, if all of the
17 following conditions are met:

18 (1) The testimony is limited to those matters that the witness
19 recalled and related prior to the hypnosis.

20 (2) The substance of the prehypnotic memory was preserved in
21 a writing, audio recording, or video recording prior to the hypnosis.

22 (3) The hypnosis was conducted in accordance with all of the
23 following procedures:

24 (A) A written record was made prior to hypnosis documenting
25 the subject's description of the event, and information that was
26 provided to the hypnotist concerning the subject matter of the
27 hypnosis.

28 (B) The subject gave informed consent to the hypnosis.

29 (C) The hypnosis session, including the pre- and post-hypnosis
30 interviews, was video recorded for subsequent review.

31 (D) The hypnosis was performed by a licensed physician and
32 surgeon, psychologist, licensed clinical social worker, licensed
33 marriage and family therapist, or licensed professional clinical
34 counselor experienced in the use of hypnosis and independent of
35 and not in the presence of law enforcement, the prosecution, or
36 the defense.

37 (4) Prior to admission of the testimony, the court holds a hearing
38 pursuant to Section 402 at which the proponent of the evidence
39 proves by clear and convincing evidence that the hypnosis did not
40 so affect the witness as to render the witness's prehypnosis

1 recollection unreliable or to substantially impair the ability to
2 cross-examine the witness concerning the witness's prehypnosis
3 recollection. At the hearing, each side shall have the right to present
4 expert testimony and to cross-examine witnesses.

5 (b) Nothing in this section shall be construed to limit the ability
6 of a party to attack the credibility of a witness who has undergone
7 hypnosis, or to limit other legal grounds to admit or exclude the
8 testimony of that witness.

9 ~~SEC. 20.~~

10 *SEC. 21.* Section 1010 of the Evidence Code is amended to
11 read:

12 1010. As used in this article, "psychotherapist" means a person
13 who is, or is reasonably believed by the patient to be:

14 (a) A person authorized to practice medicine in any state or
15 nation who devotes, or is reasonably believed by the patient to
16 devote, a substantial portion of his or her time to the practice of
17 psychiatry.

18 (b) A person licensed as a psychologist under Chapter 6.6
19 (commencing with Section 2900) of Division 2 of the Business
20 and Professions Code.

21 (c) A person licensed as a clinical social worker under Article
22 4 (commencing with Section 4996) of Chapter 14 of Division 2
23 of the Business and Professions Code, when he or she is engaged
24 in applied psychotherapy of a nonmedical nature.

25 (d) A person who is serving as a school psychologist and holds
26 a credential authorizing that service issued by the state.

27 (e) A person licensed as a marriage and family therapist under
28 Chapter 13 (commencing with Section 4980) of Division 2 of the
29 Business and Professions Code.

30 (f) A person registered as a psychological assistant who is under
31 the supervision of a licensed psychologist or board certified
32 psychiatrist as required by Section 2913 of the Business and
33 Professions Code, or a person registered as a marriage and family
34 therapist intern who is under the supervision of a licensed marriage
35 and family therapist, a licensed clinical social worker, a licensed
36 psychologist, or a licensed physician and surgeon certified in
37 psychiatry, as specified in Section 4980.44 of the Business and
38 Professions Code.

1 (g) A person registered as an associate clinical social worker
2 who is under supervision as specified in Section 4996.23 of the
3 Business and Professions Code.

4 (h) A person exempt from the Psychology Licensing Law
5 pursuant to subdivision (d) of Section 2909 of the Business and
6 Professions Code who is under the supervision of a licensed
7 psychologist or board certified psychiatrist.

8 (i) A psychological intern as defined in Section 2911 of the
9 Business and Professions Code who is under the supervision of a
10 licensed psychologist or board certified psychiatrist.

11 (j) A trainee, as defined in subdivision (c) of Section 4980.03
12 of the Business and Professions Code, who is fulfilling his or her
13 supervised practicum required by subparagraph (B) of paragraph
14 (1) of subdivision (d) of Section 4980.36 of, or subdivision (c) of
15 Section 4980.37 of, the Business and Professions Code and is
16 supervised by a licensed psychologist, a board certified psychiatrist,
17 a licensed clinical social worker, a licensed marriage and family
18 therapist, or a licensed professional clinical counselor.

19 (k) A person licensed as a registered nurse pursuant to Chapter
20 6 (commencing with Section 2700) of Division 2 of the Business
21 and Professions Code, who possesses a master's degree in
22 psychiatric-mental health nursing and is listed as a
23 psychiatric-mental health nurse by the Board of Registered
24 Nursing.

25 (l) An advanced practice registered nurse who is certified as a
26 clinical nurse specialist pursuant to Article 9 (commencing with
27 Section 2838) of Chapter 6 of Division 2 of the Business and
28 Professions Code and who participates in expert clinical practice
29 in the specialty of psychiatric-mental health nursing.

30 (m) A person rendering mental health treatment or counseling
31 services as authorized pursuant to Section 6924 of the Family
32 Code.

33 (n) A person licensed as a professional clinical counselor under
34 Chapter 16 (commencing with Section 4999.10) of Division 2 of
35 the Business and Professions Code.

36 (o) A person registered as a clinical counselor intern who is
37 under the supervision of a licensed professional clinical counselor,
38 a licensed marriage and family therapist, a licensed clinical social
39 worker, a licensed psychologist, or a licensed physician and

1 surgeon certified in psychiatry, as specified in Sections 4999.42
2 to 4999.46, inclusive, of the Business and Professions Code.

3 (p) A clinical counselor trainee, as defined in subdivision (g)
4 of Section 4999.12 of the Business and Professions Code, who is
5 fulfilling his or her supervised practicum required by paragraph
6 (3) of subdivision (c) of Section 4999.32 of, or paragraph (3) of
7 subdivision (c) of Section 4999.33 of, the Business and Professions
8 Code, and is supervised by a licensed psychologist, a
9 board-certified psychiatrist, a licensed clinical social worker, a
10 licensed marriage and family therapist, or a licensed professional
11 clinical counselor.

12 ~~SEC. 21.~~

13 *SEC. 22.* Section 1014 of the Evidence Code is amended to
14 read:

15 1014. Subject to Section 912 and except as otherwise provided
16 in this article, the patient, whether or not a party, has a privilege
17 to refuse to disclose, and to prevent another from disclosing, a
18 confidential communication between patient and psychotherapist
19 if the privilege is claimed by:

20 (a) The holder of the privilege.

21 (b) A person who is authorized to claim the privilege by the
22 holder of the privilege.

23 (c) The person who was the psychotherapist at the time of the
24 confidential communication, but the person may not claim the
25 privilege if there is no holder of the privilege in existence or if he
26 or she is otherwise instructed by a person authorized to permit
27 disclosure.

28 The relationship of a psychotherapist and patient shall exist
29 between a psychological corporation as defined in Article 9
30 (commencing with Section 2995) of Chapter 6.6 of Division 2 of
31 the Business and Professions Code, a marriage and family therapist
32 corporation as defined in Article 6 (commencing with Section
33 4987.5) of Chapter 13 of Division 2 of the Business and Professions
34 Code, a licensed clinical social workers corporation as defined in
35 Article 5 (commencing with Section 4998) of Chapter 14 of
36 Division 2 of the Business and Professions Code, or a professional
37 clinical counselor corporation as defined in Article 7 (commencing
38 with Section 4999.123) of Chapter 16 of Division 2 of the Business
39 and Professions Code, and the patient to whom it renders
40 professional services, as well as between those patients and

1 psychotherapists employed by those corporations to render services
2 to those patients. The word “persons” as used in this subdivision
3 includes partnerships, corporations, limited liability companies,
4 associations, and other groups and entities.

5 ~~SEC. 22.~~

6 *SEC. 23.* Section 1157 of the Evidence Code is amended to
7 read:

8 1157. (a) Neither the proceedings nor the records of organized
9 committees of medical, medical-dental, podiatric, registered
10 dietitian, psychological, marriage and family therapist, licensed
11 clinical social worker, professional clinical counselor, or veterinary
12 staffs in hospitals, or of a peer review body, as defined in Section
13 805 of the Business and Professions Code, having the responsibility
14 of evaluation and improvement of the quality of care rendered in
15 the hospital, or for that peer review body, or medical or dental
16 review or dental hygienist review or chiropractic review or
17 podiatric review or registered dietitian review or veterinary review
18 or acupuncturist review committees of local medical, dental, dental
19 hygienist, podiatric, dietetic, veterinary, acupuncture, or
20 chiropractic societies, marriage and family therapist, licensed
21 clinical social worker, professional clinical counselor, or
22 psychological review committees of state or local marriage and
23 family therapist, state or local licensed clinical social worker, state
24 or local licensed professional clinical counselor, or state or local
25 psychological associations or societies having the responsibility
26 of evaluation and improvement of the quality of care, shall be
27 subject to discovery.

28 (b) Except as hereinafter provided, no person in attendance at
29 a meeting of any of those committees shall be required to testify
30 as to what transpired at that meeting.

31 (c) The prohibition relating to discovery or testimony does not
32 apply to the statements made by any person in attendance at a
33 meeting of any of those committees who is a party to an action or
34 proceeding the subject matter of which was reviewed at that
35 meeting, or to any person requesting hospital staff privileges, or
36 in any action against an insurance carrier alleging bad faith by the
37 carrier in refusing to accept a settlement offer within the policy
38 limits.

39 (d) The prohibitions in this section do not apply to medical,
40 dental, dental hygienist, podiatric, dietetic, psychological, marriage

1 and family therapist, licensed clinical social worker, professional
2 clinical counselor, veterinary, acupuncture, or chiropractic society
3 committees that exceed 10 percent of the membership of the
4 society, nor to any of those committees if any person serves upon
5 the committee when his or her own conduct or practice is being
6 reviewed.

7 (e) The amendments made to this section by Chapter 1081 of
8 the Statutes of 1983, or at the 1985 portion of the 1985–86 Regular
9 Session of the Legislature, at the 1990 portion of the 1989–90
10 Regular Session of the Legislature, at the 2000 portion of the
11 1999–2000 Regular Session of the Legislature, or at the 2011
12 portion of the 2011–12 Regular Session of the Legislature, do not
13 exclude the discovery or use of relevant evidence in a criminal
14 action.

15 ~~SEC. 23.~~

16 *SEC. 24.* Section 3202 of the Family Code is amended to read:

17 3202. (a) All supervised visitation and exchange programs
18 funded pursuant to this chapter shall comply with all requirements
19 of the Uniform Standards of Practice for Providers of Supervised
20 Visitation set forth in Section 26.2 of the Standards of Judicial
21 Administration as amended. The family law division of the superior
22 court may contract with eligible providers of supervised visitation
23 and exchange services, education, and group counseling to provide
24 services under this chapter.

25 (b) As used in this section, “eligible provider” means:

26 (1) For providers of supervised visitation and exchange services,
27 a local public agency or nonprofit entity that satisfies the Uniform
28 Standards of Practice for Providers of Supervised Visitation.

29 (2) For providers of group counseling, a professional licensed
30 to practice psychotherapy in this state, including, but not limited
31 to, a licensed psychiatrist, licensed psychologist, licensed clinical
32 social worker, licensed marriage and family therapist, or licensed
33 professional clinical counselor; or a mental health intern working
34 under the direct supervision of a professional licensed to practice
35 psychotherapy.

36 (3) For providers of education, a professional with a bachelor’s
37 or master’s degree in human behavior, child development,
38 psychology, counseling, family-life education, or a related field,
39 having specific training in issues relating to child and family
40 development, substance abuse, child abuse, domestic violence,

1 effective parenting, and the impact of divorce and interparental
2 conflict on children; or an intern working under the supervision
3 of that professional.

4 ~~SEC. 24.~~

5 *SEC. 25.* Section 6924 of the Family Code is amended to read:
6 6924. (a) As used in this section:

7 (1) “Mental health treatment or counseling services” means the
8 provision of mental health treatment or counseling on an outpatient
9 basis by any of the following:

10 (A) A governmental agency.

11 (B) A person or agency having a contract with a governmental
12 agency to provide the services.

13 (C) An agency that receives funding from community united
14 funds.

15 (D) A runaway house or crisis resolution center.

16 (E) A professional person, as defined in paragraph (2).

17 (2) “Professional person” means any of the following:

18 (A) A person designated as a mental health professional in
19 Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of
20 Chapter 1 of Title 9 of the California Code of Regulations.

21 (B) A marriage and family therapist as defined in Chapter 13
22 (commencing with Section 4980) of Division 2 of the Business
23 and Professions Code.

24 (C) A licensed educational psychologist as defined in Article 5
25 (commencing with Section 4986) of Chapter 13 of Division 2 of
26 the Business and Professions Code.

27 (D) A credentialed school psychologist as described in Section
28 49424 of the Education Code.

29 (E) A clinical psychologist as defined in Section 1316.5 of the
30 Health and Safety Code.

31 (F) The chief administrator of an agency referred to in paragraph
32 (1) or (3).

33 (G) A person registered as a marriage and family therapist intern,
34 as defined in Chapter 13 (commencing with Section 4980) of
35 Division 2 of the Business and Professions Code, while working
36 under the supervision of a licensed professional specified in
37 subdivision (g) of Section 4980.03 of the Business and Professions
38 Code.

1 (H) A licensed professional clinical counselor, as defined in
2 Chapter 16 (commencing with Section 4999.10) of Division 2 of
3 the Business and Professions Code.

4 (I) A person registered as a clinical counselor intern, as defined
5 in Chapter 16 (commencing with Section 4999.10) of Division 2
6 of the Business and Professions Code, while working under the
7 supervision of a licensed professional specified in subdivision (h)
8 of Section 4999.12 of the Business and Professions Code.

9 (3) “Residential shelter services” means any of the following:

10 (A) The provision of residential and other support services to
11 minors on a temporary or emergency basis in a facility that services
12 only minors by a governmental agency, a person or agency having
13 a contract with a governmental agency to provide these services,
14 an agency that receives funding from community funds, or a
15 licensed community care facility or crisis resolution center.

16 (B) The provision of other support services on a temporary or
17 emergency basis by any professional person as defined in paragraph
18 (2).

19 (b) A minor who is 12 years of age or older may consent to
20 mental health treatment or counseling on an outpatient basis, or
21 to residential shelter services, if both of the following requirements
22 are satisfied:

23 (1) The minor, in the opinion of the attending professional
24 person, is mature enough to participate intelligently in the
25 outpatient services or residential shelter services.

26 (2) The minor (A) would present a danger of serious physical
27 or mental harm to self or to others without the mental health
28 treatment or counseling or residential shelter services, or (B) is
29 the alleged victim of incest or child abuse.

30 (c) A professional person offering residential shelter services,
31 whether as an individual or as a representative of an entity specified
32 in paragraph (3) of subdivision (a), shall make his or her best
33 efforts to notify the parent or guardian of the provision of services.

34 (d) The mental health treatment or counseling of a minor
35 authorized by this section shall include involvement of the minor’s
36 parent or guardian unless, in the opinion of the professional person
37 who is treating or counseling the minor, the involvement would
38 be inappropriate. The professional person who is treating or
39 counseling the minor shall state in the client record whether and
40 when the person attempted to contact the minor’s parent or

1 guardian, and whether the attempt to contact was successful or
2 unsuccessful, or the reason why, in the professional person's
3 opinion, it would be inappropriate to contact the minor's parent
4 or guardian.

5 (e) The minor's parents or guardian are not liable for payment
6 for mental health treatment or counseling services provided
7 pursuant to this section unless the parent or guardian participates
8 in the mental health treatment or counseling, and then only for
9 services rendered with the participation of the parent or guardian.

10 The minor's parents or guardian are not liable for payment for any
11 residential shelter services provided pursuant to this section unless
12 the parent or guardian consented to the provision of those services.

13 (f) This section does not authorize a minor to receive convulsive
14 therapy or psychosurgery as defined in subdivisions (f) and (g) of
15 Section 5325 of the Welfare and Institutions Code, or psychotropic
16 drugs without the consent of the minor's parent or guardian.

17 ~~SEC. 25.~~

18 *SEC. 26.* Section 6929 of the Family Code is amended to read:

19 6929. (a) As used in this section:

20 (1) "Counseling" means the provision of counseling services
21 by a provider under a contract with the state or a county to provide
22 alcohol or drug abuse counseling services pursuant to Part 2
23 (commencing with Section 5600) of Division 5 of the Welfare and
24 Institutions Code or pursuant to Division 10.5 (commencing with
25 Section 11750) of the Health and Safety Code.

26 (2) "Drug or alcohol" includes, but is not limited to, any
27 substance listed in any of the following:

28 (A) Section 380 or 381 of the Penal Code.

29 (B) Division 10 (commencing with Section 11000) of the Health
30 and Safety Code.

31 (C) Subdivision (f) of Section 647 of the Penal Code.

32 (3) "LAAM" means levoalphacetylmethadol as specified in
33 paragraph (10) of subdivision (c) of Section 11055 of the Health
34 and Safety Code.

35 (4) "Professional person" means a physician and surgeon,
36 registered nurse, psychologist, clinical social worker, professional
37 clinical counselor, marriage and family therapist, registered
38 marriage and family therapist intern when appropriately employed
39 and supervised pursuant to Section 4980.43 of the Business and
40 Professions Code, psychological assistant when appropriately

1 employed and supervised pursuant to Section 2913 of the Business
2 and Professions Code, associate clinical social worker when
3 appropriately employed and supervised pursuant to Section 4996.18
4 of the Business and Professions Code, or registered clinical
5 counselor intern when appropriately employed and supervised
6 pursuant to Section 4999.42 of the Business and Professions Code.

7 (b) A minor who is 12 years of age or older may consent to
8 medical care and counseling relating to the diagnosis and treatment
9 of a drug- or alcohol-related problem.

10 (c) The treatment plan of a minor authorized by this section
11 shall include the involvement of the minor's parent or guardian,
12 if appropriate, as determined by the professional person or
13 treatment facility treating the minor. The professional person
14 providing medical care or counseling to a minor shall state in the
15 minor's treatment record whether and when the professional person
16 attempted to contact the minor's parent or guardian, and whether
17 the attempt to contact the parent or guardian was successful or
18 unsuccessful, or the reason why, in the opinion of the professional
19 person, it would not be appropriate to contact the minor's parent
20 or guardian.

21 (d) The minor's parent or guardian is not liable for payment for
22 any care provided to a minor pursuant to this section, except that
23 if the minor's parent or guardian participates in a counseling
24 program pursuant to this section, the parent or guardian is liable
25 for the cost of the services provided to the minor and the parent
26 or guardian.

27 (e) This section does not authorize a minor to receive
28 replacement narcotic abuse treatment, in a program licensed
29 pursuant to Article 3 (commencing with Section 11875) of Chapter
30 1 of Part 3 of Division 10.5 of the Health and Safety Code, without
31 the consent of the minor's parent or guardian.

32 (f) It is the intent of the Legislature that the state shall respect
33 the right of a parent or legal guardian to seek medical care and
34 counseling for a drug- or alcohol-related problem of a minor child
35 when the child does not consent to the medical care and counseling,
36 and nothing in this section shall be construed to restrict or eliminate
37 this right.

38 (g) Notwithstanding any other provision of law, in cases where
39 a parent or legal guardian has sought the medical care and
40 counseling for a drug- or alcohol-related problem of a minor child,

1 the physician and surgeon shall disclose medical information
2 concerning the care to the minor's parent or legal guardian upon
3 his or her request, even if the minor child does not consent to
4 disclosure, without liability for the disclosure.

5 ~~SEC. 26.~~

6 *SEC. 27.* Section 1277 of the Health and Safety Code is
7 amended to read:

8 1277. (a) No license shall be issued by the state department
9 unless it finds that the premises, the management, the bylaws, rules
10 and regulations, the equipment, the staffing, both professional and
11 nonprofessional, and the standards of care and services are adequate
12 and appropriate, and that the health facility is operated in the
13 manner required by this chapter and by the rules and regulations
14 adopted hereunder.

15 (b) (1) Notwithstanding any provision of Part 2 (commencing
16 with Section 5600) of Division 5 of, or Division 7 (commencing
17 with Section 7100) of, the Welfare and Institutions Code or any
18 other law to the contrary, except Sections 2072 and 2073 of the
19 Business and Professions Code, the licensure requirements for
20 professional personnel, including, but not limited to, physicians
21 and surgeons, dentists, podiatrists, psychologists, marriage and
22 family therapists, pharmacists, registered nurses, clinical social
23 workers, and professional clinical counselors in the state and other
24 governmental health facilities licensed by the state department
25 shall not be less than for those professional personnel in health
26 facilities under private ownership.

27 (2) Persons employed as psychologists and clinical social
28 workers, while continuing in their employment in the same class
29 as of January 1, 1979, in the same state or other governmental
30 health facility licensed by the state department, including those
31 persons on authorized leave, but not including intermittent
32 personnel, shall be exempt from the requirements of paragraph
33 (1).

34 (3) The requirements of paragraph (1) may be waived by the
35 state department solely for persons in the professions of
36 psychology, marriage and family therapy, clinical social work, or
37 professional clinical counseling who are gaining qualifying
38 experience for licensure in such profession in this state. A waiver
39 granted pursuant to this paragraph shall not exceed three years
40 from the date the employment commences in this state in the case

1 of psychologists, or four years from commencement of the
2 employment in this state in the case of marriage and family
3 therapists, clinical social workers, and professional clinical
4 counselors, at which time licensure shall have been obtained or
5 the employment shall be terminated, except that an extension of
6 a waiver of licensure for marriage and family therapists, clinical
7 social workers, and professional clinical counselors may be granted
8 for one additional year, based on extenuating circumstances
9 determined by the state department pursuant to subdivision (e).
10 For persons employed as psychologists, clinical social workers,
11 marriage and family therapists, or professional clinical counselors
12 less than full time, an extension of a waiver of licensure may be
13 granted for additional years proportional to the extent of part-time
14 employment, as long as the person is employed without interruption
15 in service, but in no case shall the waiver of licensure exceed six
16 years in the case of clinical social workers, marriage and family
17 therapists, or professional clinical counselors, or five years in the
18 case of psychologists.

19 (4) The durational limitation upon waivers pursuant to paragraph
20 (3) shall not apply to any of the following:

21 (A) Active candidates for a doctoral degree in social work, social
22 welfare, or social science, who are enrolled at an accredited
23 university, college, or professional school, but these limitations
24 shall apply following completion of this training.

25 (B) Active candidates for a doctoral degree in marriage and
26 family therapy who are enrolled at a school, college, or university,
27 specified in subdivision (b) of Section 4980.36 of, or subdivision
28 (b) of Section 4980.37 of, the Business and Professions Code, but
29 the limitations shall apply following completion of the training.

30 (C) Active candidates for a doctoral degree in professional
31 clinical counseling who are enrolled at a school, college, or
32 university, specified in subdivision (b) of Section 4999.32 of, or
33 subdivision (b) of Section 4999.33 of, the Business and Professions
34 Code, but the limitations shall apply following the completion of
35 the training.

36 (5) A waiver pursuant to paragraph (3) shall be granted only to
37 the extent necessary to qualify for licensure, except that personnel
38 recruited for employment from outside this state and whose
39 experience is sufficient to gain admission to a licensing
40 examination shall nevertheless have one year from the date of their

1 employment in California to become licensed, at which time
2 licensure shall have been obtained or the employment shall be
3 terminated, provided that the employee shall take the licensure
4 examination at the earliest possible date after the date of his or her
5 employment, and if the employee does not pass the examination
6 at that time, he or she shall have a second opportunity to pass the
7 next possible examination, subject to the one-year limit for
8 marriage and family therapists, clinical social workers, and
9 professional clinical counselors, and subject to a two-year limit
10 for psychologists.

11 (c) A special permit shall be issued by the state department
12 when it finds that the staff, both professional and nonprofessional,
13 and the standards of care and services are adequate and appropriate,
14 and that the special services unit is operated in the manner required
15 in this chapter and by the rules and regulations adopted hereunder.

16 (d) The state department shall apply the same standards to state
17 and other governmental health facilities that it licenses as it applies
18 to health facilities in private ownership, including standards
19 specifying the level of training and supervision of all unlicensed
20 practitioners. Except for psychologists, the department may grant
21 an extension of a waiver of licensure for personnel recruited from
22 outside this state for one additional year, based upon extenuating
23 circumstances as determined by the department pursuant to
24 subdivision (e).

25 (e) The department shall grant a request for an extension of a
26 waiver based on extenuating circumstances, pursuant to subdivision
27 (b) or (d), if any of the following circumstances exist:

28 (1) The person requesting the extension has experienced a recent
29 catastrophic event which may impair the person's ability to qualify
30 for and pass the license examination. Those events may include,
31 but are not limited to, significant hardship caused by a natural
32 disaster, serious and prolonged illness of the person, serious and
33 prolonged illness or death of a child, spouse, or parent, or other
34 stressful circumstances.

35 (2) The person requesting the extension has difficulty speaking
36 or writing the English language, or other cultural and ethnic factors
37 exist which substantially impair the person's ability to qualify for
38 and pass the license examination.

1 (3) The person requesting the extension has experienced other
2 personal hardship which the department, in its discretion,
3 determines to warrant the extension.

4 ~~SEC. 27.~~

5 *SEC. 28.* Section 1348.8 of the Health and Safety Code is
6 amended to read:

7 1348.8. (a) A health care service plan that provides, operates,
8 or contracts for telephone medical advice services to its enrollees
9 and subscribers shall do all of the following:

10 (1) Ensure that the in-state or out-of-state telephone medical
11 advice service is registered pursuant to Chapter 15 (commencing
12 with Section 4999) of Division 2 of the Business and Professions
13 Code.

14 (2) Ensure that the staff providing telephone medical advice
15 services for the in-state or out-of-state telephone medical advice
16 service are licensed as follows:

17 (A) For full service health care service plans, the staff hold a
18 valid California license as a registered nurse or a valid license in
19 the state within which they provide telephone medical advice
20 services as a physician and surgeon or physician assistant, and are
21 operating in compliance with the laws governing their respective
22 scopes of practice.

23 (B) (i) For specialized health care service plans providing,
24 operating, or contracting with a telephone medical advice service
25 in California, the staff shall be appropriately licensed, registered,
26 or certified as a dentist pursuant to Chapter 4 (commencing with
27 Section 1600) of Division 2 of the Business and Professions Code,
28 as a dental hygienist pursuant to Article 7 (commencing with
29 Section 1740) of Chapter 4 of Division 2 of the Business and
30 Professions Code, as a physician and surgeon pursuant to Chapter
31 5 (commencing with Section 2000) of Division 2 of the Business
32 and Professions Code or the Osteopathic Initiative Act, as a
33 registered nurse pursuant to Chapter 6 (commencing with Section
34 2700) of Division 2 of the Business and Professions Code, as a
35 psychologist pursuant to Chapter 6.6 (commencing with Section
36 2900) of Division 2 of the Business and Professions Code, as an
37 optometrist pursuant to Chapter 7 (commencing with Section 3000)
38 of Division 2 of the Business and Professions Code, as a marriage
39 and family therapist pursuant to Chapter 13 (commencing with
40 Section 4980) of Division 2 of the Business and Professions Code,

1 as a licensed clinical social worker pursuant to Chapter 14
2 (commencing with Section 4991) of Division 2 of the Business
3 and Professions Code, as a professional clinical counselor pursuant
4 to Chapter 16 (commencing with Section 4999.10) of Division 2
5 of the Business and Professions Code, or as a chiropractor pursuant
6 to the Chiropractic Initiative Act, and operating in compliance
7 with the laws governing their respective scopes of practice.

8 (ii) For specialized health care service plans providing,
9 operating, or contracting with an out-of-state telephone medical
10 advice service, the staff shall be health care professionals, as
11 identified in clause (i), who are licensed, registered, or certified
12 in the state within which they are providing the telephone medical
13 advice services and are operating in compliance with the laws
14 governing their respective scopes of practice. All registered nurses
15 providing telephone medical advice services to both in-state and
16 out-of-state business entities registered pursuant to this chapter
17 shall be licensed pursuant to Chapter 6 (commencing with Section
18 2700) of Division 2 of the Business and Professions Code.

19 (3) Ensure that every full service health care service plan
20 provides for a physician and surgeon who is available on an on-call
21 basis at all times the service is advertised to be available to
22 enrollees and subscribers.

23 (4) Ensure that staff members handling enrollee or subscriber
24 calls, who are not licensed, certified, or registered as required by
25 paragraph (2), do not provide telephone medical advice. Those
26 staff members may ask questions on behalf of a staff member who
27 is licensed, certified, or registered as required by paragraph (2),
28 in order to help ascertain the condition of an enrollee or subscriber
29 so that the enrollee or subscriber can be referred to licensed staff.
30 However, under no circumstances shall those staff members use
31 the answers to those questions in an attempt to assess, evaluate,
32 advise, or make any decision regarding the condition of an enrollee
33 or subscriber or determine when an enrollee or subscriber needs
34 to be seen by a licensed medical professional.

35 (5) Ensure that no staff member uses a title or designation when
36 speaking to an enrollee or subscriber that may cause a reasonable
37 person to believe that the staff member is a licensed, certified, or
38 registered professional described in Section 4999.2 of the Business
39 and Professions Code unless the staff member is a licensed,
40 certified, or registered professional.

1 (6) Ensure that the in-state or out-of-state telephone medical
2 advice service designates an agent for service of process in
3 California and files this designation with the director.

4 (7) Requires that the in-state or out-of-state telephone medical
5 advice service makes and maintains records for a period of five
6 years after the telephone medical advice services are provided,
7 including, but not limited to, oral or written transcripts of all
8 medical advice conversations with the health care service plan's
9 enrollees or subscribers in California and copies of all complaints.
10 If the records of telephone medical advice services are kept out of
11 state, the health care service plan shall, upon the request of the
12 director, provide the records to the director within 10 days of the
13 request.

14 (8) Ensure that the telephone medical advice services are
15 provided consistent with good professional practice.

16 (b) The director shall forward to the Department of Consumer
17 Affairs, within 30 days of the end of each calendar quarter, data
18 regarding complaints filed with the department concerning
19 telephone medical advice services.

20 (c) For purposes of this section, "telephone medical advice"
21 means a telephonic communication between a patient and a health
22 care professional in which the health care professional's primary
23 function is to provide to the patient a telephonic response to the
24 patient's questions regarding his or her or a family member's
25 medical care or treatment. "Telephone medical advice" includes
26 assessment, evaluation, or advice provided to patients or their
27 family members.

28 ~~SEC. 28.~~

29 *SEC. 29.* Section 1367.26 of the Health and Safety Code is
30 amended to read:

31 1367.26. (a) A health care service plan shall provide, upon
32 request, a list of the following contracting providers, within the
33 enrollee's or prospective enrollee's general geographic area:

34 (1) Primary care providers.

35 (2) Medical groups.

36 (3) Independent practice associations.

37 (4) Hospitals.

38 (5) All other available contracting physicians and surgeons,
39 psychologists, acupuncturists, optometrists, podiatrists,
40 chiropractors, licensed clinical social workers, marriage and family

1 therapists, professional clinical counselors, and nurse midwives
2 to the extent their services may be accessed and are covered
3 through the contract with the plan.

4 (b) This list shall indicate which providers have notified the
5 plan that they have closed practices or are otherwise not accepting
6 new patients at that time.

7 (c) The list shall indicate that it is subject to change without
8 notice and shall provide a telephone number that enrollees can
9 contact to obtain information regarding a particular provider. This
10 information shall include whether or not that provider has indicated
11 that he or she is accepting new patients.

12 (d) A health care service plan shall provide this information in
13 written form to its enrollees or prospective enrollees upon request.
14 A plan may, with the permission of the enrollee, satisfy the
15 requirements of this section by directing the enrollee or prospective
16 enrollee to the plan's provider listings on its Internet Web site.
17 Plans shall ensure that the information provided is updated at least
18 quarterly. A plan may satisfy this update requirement by providing
19 an insert or addendum to any existing provider listing. This
20 requirement shall not mandate a complete republishing of a plan's
21 provider directory.

22 (e) Each plan shall make information available, upon request,
23 concerning a contracting provider's professional degree, board
24 certifications, and any recognized subspecialty qualifications a
25 specialist may have.

26 (f) Nothing in this section shall prohibit a plan from requiring
27 its contracting providers, contracting provider groups, or
28 contracting specialized health care plans to satisfy these
29 requirements. If a plan delegates the responsibility of complying
30 with this section to its contracting providers, contracting provider
31 groups, or contracting specialized health care plans, the plan shall
32 ensure that the requirements of this section are met.

33 (g) Every health care service plan shall allow enrollees to request
34 the information required by this section through their toll-free
35 telephone number or in writing.

36 ~~SEC. 29.~~

37 *SEC. 30.* Section 1373 of the Health and Safety Code is
38 amended to read:

39 1373. (a) A plan contract may not provide an exception for
40 other coverage if the other coverage is entitlement to Medi-Cal

1 benefits under Chapter 7 (commencing with Section 14000) or
2 Chapter 8 (commencing with Section 14200) of Part 3 of Division
3 9 of the Welfare and Institutions Code, or Medicaid benefits under
4 Subchapter 19 (commencing with Section 1396) of Chapter 7 of
5 Title 42 of the United States Code.

6 Each plan contract shall be interpreted not to provide an
7 exception for the Medi-Cal or Medicaid benefits.

8 A plan contract shall not provide an exemption for enrollment
9 because of an applicant's entitlement to Medi-Cal benefits under
10 Chapter 7 (commencing with Section 14000) or Chapter 8
11 (commencing with Section 14200) of Part 3 of Division 9 of the
12 Welfare and Institutions Code, or Medicaid benefits under
13 Subchapter 19 (commencing with Section 1396) of Chapter 7 of
14 Title 42 of the United States Code.

15 A plan contract may not provide that the benefits payable
16 thereunder are subject to reduction if the individual insured has
17 entitlement to the Medi-Cal or Medicaid benefits.

18 (b) A plan contract that provides coverage, whether by specific
19 benefit or by the effect of general wording, for sterilization
20 operations or procedures shall not impose any disclaimer,
21 restriction on, or limitation of, coverage relative to the covered
22 individual's reason for sterilization.

23 As used in this section, "sterilization operations or procedures"
24 shall have the same meaning as that specified in Section 10120 of
25 the Insurance Code.

26 (c) Every plan contract that provides coverage to the spouse or
27 dependents of the subscriber or spouse shall grant immediate
28 accident and sickness coverage, from and after the moment of
29 birth, to each newborn infant of any subscriber or spouse covered
30 and to each minor child placed for adoption from and after the date
31 on which the adoptive child's birth parent or other appropriate
32 legal authority signs a written document, including, but not limited
33 to, a health facility minor release report, a medical authorization
34 form, or a relinquishment form, granting the subscriber or spouse
35 the right to control health care for the adoptive child or, absent
36 this written document, on the date there exists evidence of the
37 subscriber's or spouse's right to control the health care of the child
38 placed for adoption. No plan may be entered into or amended if it
39 contains any disclaimer, waiver, or other limitation of coverage
40 relative to the coverage or insurability of newborn infants of, or

1 children placed for adoption with, a subscriber or spouse covered
2 as required by this subdivision.

3 (d) (1) Every plan contract that provides that coverage of a
4 dependent child of a subscriber shall terminate upon attainment
5 of the limiting age for dependent children specified in the plan,
6 shall also provide that attainment of the limiting age shall not
7 operate to terminate the coverage of the child while the child is
8 and continues to meet both of the following criteria:

9 (A) Incapable of self-sustaining employment by reason of a
10 physically or mentally disabling injury, illness, or condition.

11 (B) Chiefly dependent upon the subscriber for support and
12 maintenance.

13 (2) The plan shall notify the subscriber that the dependent child's
14 coverage will terminate upon attainment of the limiting age unless
15 the subscriber submits proof of the criteria described in
16 subparagraphs (A) and (B) of paragraph (1) to the plan within 60
17 days of the date of receipt of the notification. The plan shall send
18 this notification to the subscriber at least 90 days prior to the date
19 the child attains the limiting age. Upon receipt of a request by the
20 subscriber for continued coverage of the child and proof of the
21 criteria described in subparagraphs (A) and (B) of paragraph (1),
22 the plan shall determine whether the child meets that criteria before
23 the child attains the limiting age. If the plan fails to make the
24 determination by that date, it shall continue coverage of the child
25 pending its determination.

26 (3) The plan may subsequently request information about a
27 dependent child whose coverage is continued beyond the limiting
28 age under this subdivision but not more frequently than annually
29 after the two-year period following the child's attainment of the
30 limiting age.

31 (4) If the subscriber changes carriers to another plan or to a
32 health insurer, the new plan or insurer shall continue to provide
33 coverage for the dependent child. The new plan or insurer may
34 request information about the dependent child initially and not
35 more frequently than annually thereafter to determine if the child
36 continues to satisfy the criteria in subparagraphs (A) and (B) of
37 paragraph (1). The subscriber shall submit the information
38 requested by the new plan or insurer within 60 days of receiving
39 the request.

1 (5) (A) Except as set forth in subparagraph (B), under no
2 circumstances shall the limiting age be less than 26 years of age
3 with respect to plan years beginning on or after September 23,
4 2010.

5 (B) For plan years beginning before January 1, 2014, a group
6 health care service plan contract that qualifies as a grandfathered
7 health plan under Section 1251 of the federal Patient Protection
8 and Affordable Care Act (Public Law 111-148) and that makes
9 available dependent coverage of children may exclude from
10 coverage an adult child who has not attained 26 years of age only
11 if the adult child is eligible to enroll in an eligible
12 employer-sponsored health plan, as defined in Section 5000A(f)(2)
13 of the Internal Revenue Code, other than a group health plan of a
14 parent.

15 (C) (i) With respect to a child (I) whose coverage under a group
16 or individual plan contract ended, or who was denied or not eligible
17 for coverage under a group or individual plan contract, because
18 under the terms of the contract the availability of dependent
19 coverage of children ended before the attainment of 26 years of
20 age, and (II) who becomes eligible for that coverage by reason of
21 the application of this paragraph, the health care service plan shall
22 give the child an opportunity to enroll that shall continue for at
23 least 30 days. This opportunity and the notice described in clause
24 (ii) shall be provided not later than the first day of the first plan
25 year beginning on or after September 23, 2010, consistent with
26 the federal Patient Protection and Affordable Care Act (Public
27 Law 111-148), as amended by the federal Health Care and
28 Education Reconciliation Act of 2010 (Public Law 111-152), and
29 any additional federal guidance or regulations issued by the United
30 States Secretary of Health and Human Services.

31 (ii) The health care service plan shall provide written notice
32 stating that a dependent described in clause (i) who has not attained
33 26 years of age is eligible to enroll in the plan for coverage. This
34 notice may be provided to the dependent's parent on behalf of the
35 dependent. If the notice is included with other enrollment materials
36 for a group plan, the notice shall be prominent.

37 (iii) In the case of an individual who enrolls under this
38 subparagraph, coverage shall take effect no later than the first day
39 of the first plan year beginning on or after September 23, 2010.

(iv) A dependent enrolling in a group health plan for coverage pursuant to this subparagraph shall be treated as a special enrollee as provided under the rules of Section 146.117(d) of Title 45 of the Code of Federal Regulations. The health care service plan shall offer the recipient of the notice all of the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. Any difference in benefits or cost-sharing requirements shall constitute a different benefit package. A dependent enrolling in a group health plan for coverage pursuant to this subparagraph shall not be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(D) Nothing in this section shall require a health care service plan to make coverage available for a child of a child receiving dependent coverage. Nothing in this section shall be construed to modify the definition of “dependent” as used in the Revenue and Taxation Code with respect to the tax treatment of the cost of coverage.

(e) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated, or an individual subscriber leaves the group, or the enrollees’ eligibility status changes.

1 (h) (1) A health care service plan or specialized health care
2 service plan may provide for coverage of, or for payment for,
3 professional mental health services, or vision care services, or for
4 the exclusion of these services. If the terms and conditions include
5 coverage for services provided in a general acute care hospital or
6 an acute psychiatric hospital as defined in Section 1250 and do
7 not restrict or modify the choice of providers, the coverage shall
8 extend to care provided by a psychiatric health facility as defined
9 in Section 1250.2 operating pursuant to licensure by the State
10 Department of Mental Health. A health care service plan that offers
11 outpatient mental health services but does not cover these services
12 in all of its group contracts shall communicate to prospective group
13 contractholders as to the availability of outpatient coverage for the
14 treatment of mental or nervous disorders.

15 (2) No plan shall prohibit the member from selecting any
16 psychologist who is licensed pursuant to the Psychology Licensing
17 Law (Chapter 6.6 (commencing with Section 2900) of Division 2
18 of the Business and Professions Code), any optometrist who is the
19 holder of a certificate issued pursuant to Chapter 7 (commencing
20 with Section 3000) of Division 2 of the Business and Professions
21 Code or, upon referral by a physician and surgeon licensed pursuant
22 to the Medical Practice Act (Chapter 5 (commencing with Section
23 2000) of Division 2 of the Business and Professions Code), (A)
24 any marriage and family therapist who is the holder of a license
25 under Section 4980.50 of the Business and Professions Code, (B)
26 any licensed clinical social worker who is the holder of a license
27 under Section 4996 of the Business and Professions Code, (C) any
28 registered nurse licensed pursuant to Chapter 6 (commencing with
29 Section 2700) of Division 2 of the Business and Professions Code,
30 who possesses a master's degree in psychiatric-mental health
31 nursing and is listed as a psychiatric-mental health nurse by the
32 Board of Registered Nursing, (D) any advanced practice registered
33 nurse certified as a clinical nurse specialist pursuant to Article 9
34 (commencing with Section 2838) of Chapter 6 of Division 2 of
35 the Business and Professions Code who participates in expert
36 clinical practice in the specialty of psychiatric-mental health
37 nursing, to perform the particular services covered under the terms
38 of the plan, and the certificate holder is expressly authorized by
39 law to perform these services, or (E) any professional clinical
40 counselor who is the holder of a license under Chapter 16

1 (commencing with Section 4999.10) of Division 2 of the Business
2 and Professions Code.

3 (3) Nothing in this section shall be construed to allow any
4 certificate holder or licensee enumerated in this section to perform
5 professional mental health services beyond his or her field or fields
6 of competence as established by his or her education, training, and
7 experience.

8 (4) For the purposes of this section:

9 (A) “Marriage and family therapist” means a licensed marriage
10 and family therapist who has received specific instruction in
11 assessment, diagnosis, prognosis, and counseling, and
12 psychotherapeutic treatment of premarital, marriage, family, and
13 child relationship dysfunctions, which is equivalent to the
14 instruction required for licensure on January 1, 1981.

15 (B) “Professional clinical counselor” means a licensed
16 professional clinical counselor who has received specific
17 instruction in assessment, diagnosis, prognosis, counseling, and
18 psychotherapeutic treatment of mental and emotional disorders,
19 which is equivalent to the instruction required for licensure on
20 January 1, 2012.

21 (5) Nothing in this section shall be construed to allow a member
22 to select and obtain mental health or psychological or vision care
23 services from a certificate holder or licenseholder who is not
24 directly affiliated with or under contract to the health care service
25 plan or specialized health care service plan to which the member
26 belongs. All health care service plans and individual practice
27 associations that offer mental health benefits shall make reasonable
28 efforts to make available to their members the services of licensed
29 psychologists. However, a failure of a plan or association to comply
30 with the requirements of the preceding sentence shall not constitute
31 a misdemeanor.

32 (6) As used in this subdivision, “individual practice association”
33 means an entity as defined in subsection (5) of Section 1307 of
34 the federal Public Health Service Act (42 U.S.C. Sec. 300e-1(5)).

35 (7) Health care service plan coverage for professional mental
36 health services may include community residential treatment
37 services that are alternatives to inpatient care and that are directly
38 affiliated with the plan or to which enrollees are referred by
39 providers affiliated with the plan.

1 (i) If the plan utilizes arbitration to settle disputes, the plan
2 contracts shall set forth the type of disputes subject to arbitration,
3 the process to be utilized, and how it is to be initiated.

4 (j) A plan contract that provides benefits that accrue after a
5 certain time of confinement in a health care facility shall specify
6 what constitutes a day of confinement or the number of consecutive
7 hours of confinement that are requisite to the commencement of
8 benefits.

9 (k) If a plan provides coverage for a dependent child who is
10 over 26 years of age and enrolled as a full-time student at a
11 secondary or postsecondary educational institution, the following
12 shall apply:

13 (1) Any break in the school calendar shall not disqualify the
14 dependent child from coverage.

15 (2) If the dependent child takes a medical leave of absence, and
16 the nature of the dependent child's injury, illness, or condition
17 would render the dependent child incapable of self-sustaining
18 employment, the provisions of subdivision (d) shall apply if the
19 dependent child is chiefly dependent on the subscriber for support
20 and maintenance.

21 (3) (A) If the dependent child takes a medical leave of absence
22 from school, but the nature of the dependent child's injury, illness,
23 or condition does not meet the requirements of paragraph (2), the
24 dependent child's coverage shall not terminate for a period not to
25 exceed 12 months or until the date on which the coverage is
26 scheduled to terminate pursuant to the terms and conditions of the
27 plan, whichever comes first. The period of coverage under this
28 paragraph shall commence on the first day of the medical leave of
29 absence from the school or on the date the physician and surgeon
30 determines the illness prevented the dependent child from attending
31 school, whichever comes first. Any break in the school calendar
32 shall not disqualify the dependent child from coverage under this
33 paragraph.

34 (B) Documentation or certification of the medical necessity for
35 a leave of absence from school shall be submitted to the plan at
36 least 30 days prior to the medical leave of absence from the school,
37 if the medical reason for the absence and the absence are
38 foreseeable, or 30 days after the start date of the medical leave of
39 absence from school and shall be considered prima facie evidence
40 of entitlement to coverage under this paragraph.

(4) This subdivision shall not apply to a specialized health care service plan or to a Medicare supplement plan.

~~SEC. 30.~~

SEC. 31. Section 1373.8 of the Health and Safety Code is amended to read:

1373.8. A health care service plan contract where the plan is licensed to do business in this state and the plan provides coverage that includes California residents, but that may be written or issued for delivery outside of California, and where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, an advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, a marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, or a professional clinical counselor who is the holder of a license under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code shall not be deemed to prohibit persons covered under the contract from selecting those licensed persons in California to perform the services in California that are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued for delivery.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983–84 Legislative Session that persons covered by the contract and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the plan for services of those providers rendered to those persons.

~~SEC. 31.~~

SEC. 32. Section 1373.95 of the Health and Safety Code is amended to read:

1373.95. (a) (1) A health care service plan, other than a specialized health care service plan that offers professional mental

1 health services on an employer-sponsored group basis, shall file
2 a written continuity of care policy as a material modification with
3 the department before March 31, 2004.

4 (2) A health care service plan shall include all of the following
5 in its written continuity of care policy:

6 (A) A description of the plan's process for the block transfer of
7 enrollees from a terminated provider group or hospital to a new
8 provider group or hospital.

9 (B) A description of the manner in which the plan facilitates
10 the completion of covered services pursuant to Section 1373.96.

11 (C) A template of the notice the plan proposes to send to
12 enrollees describing its policy and informing enrollees of their
13 right to completion of covered services.

14 (D) A description of the plan's process to review an enrollee's
15 request for the completion of covered services.

16 (E) A provision ensuring that reasonable consideration is given
17 to the potential clinical effect on an enrollee's treatment caused
18 by a change of provider.

19 (3) If approved by the department, the provisions of the written
20 continuity of care policy shall replace all prior continuity of care
21 policies. The plan shall file a revision of the policy with the
22 department if it makes a material change to it.

23 (b) (1) The provisions of this subdivision apply to a specialized
24 health care service plan that offers professional mental health
25 services on an employer-sponsored group basis.

26 (2) The plan shall file with the department a written policy
27 describing the manner in which it facilitates the continuity of care
28 for a new enrollee who has been receiving services from a
29 nonparticipating mental health provider for an acute, serious, or
30 chronic mental health condition when his or her employer changed
31 health plans. The written policy shall allow the new enrollee a
32 reasonable transition period to continue his or her course of
33 treatment with the nonparticipating mental health provider prior
34 to transferring to a participating provider and shall include the
35 provision of mental health services on a timely, appropriate, and
36 medically necessary basis from the nonparticipating provider. The
37 policy may provide that the length of the transition period take
38 into account on a case-by-case basis, the severity of the enrollee's
39 condition and the amount of time reasonably necessary to effect
40 a safe transfer. The policy shall ensure that reasonable

1 consideration is given to the potential clinical effect of a change
2 of provider on the enrollee's treatment for the condition. The policy
3 shall describe the plan's process to review an enrollee's request
4 to continue his or her course of treatment with a nonparticipating
5 mental health provider. Nothing in this paragraph shall be construed
6 to require the plan to accept a nonparticipating mental health
7 provider onto its panel for treatment of other enrollees. For
8 purposes of the continuing treatment of the transferring enrollee,
9 the plan may require the nonparticipating mental health provider,
10 as a condition of the right conferred under this section, to enter
11 into its standard mental health provider contract.

12 (3) A plan may require a nonparticipating mental health provider
13 whose services are continued pursuant to the written policy, to
14 agree in writing to the same contractual terms and conditions that
15 are imposed upon the plan's participating providers, including
16 location within the plan's service area, reimbursement
17 methodologies, and rates of payment. If the plan determines that
18 an enrollee's health care treatment should temporarily continue
19 with his or her existing provider or nonparticipating mental health
20 provider, the plan shall not be liable for actions resulting solely
21 from the negligence, malpractice, or other tortious or wrongful
22 acts arising out of the provisions of services by the existing
23 provider or a nonparticipating mental health provider.

24 (4) The written policy shall not apply to an enrollee who is
25 offered an out-of-network option or to an enrollee who had the
26 option to continue with his or her previous specialized health care
27 service plan that offers professional mental health services on an
28 employer-sponsored group basis or mental health provider and
29 instead voluntarily chose to change health plans.

30 (5) This subdivision shall not apply to a specialized health care
31 service plan that offers professional mental health services on an
32 employer-sponsored group basis if it includes out-of-network
33 coverage that allows the enrollee to obtain services from his or her
34 existing mental health provider or nonparticipating mental health
35 provider.

36 (c) The health care service plan, including a specialized health
37 care service plan that offers professional mental health services
38 on an employer-sponsored group basis, shall provide to all new
39 enrollees notice of its written continuity of care policy and
40 information regarding the process for an enrollee to request a

1 review under the policy and shall provide, upon request, a copy
2 of the written policy to an enrollee.

3 (d) Nothing in this section shall require a health care service
4 plan or a specialized health care service plan that offers
5 professional mental health services on an employer-sponsored
6 group basis to cover services or provide benefits that are not
7 otherwise covered under the terms and conditions of the plan
8 contract.

9 (e) The following definitions apply for the purposes of this
10 section:

11 (1) “Hospital” means a general acute care hospital.

12 (2) “Nonparticipating mental health provider” means a
13 psychiatrist, licensed psychologist, licensed marriage and family
14 therapist, licensed social worker, or licensed professional clinical
15 counselor who does not contract with the specialized health care
16 service plan that offers professional mental health services on an
17 employer-sponsored group basis.

18 (3) “Provider group” means a medical group, independent
19 practice association, or any other similar organization.

20 ~~SEC. 32.~~

21 *SEC. 33.* Section 123105 of the Health and Safety Code is
22 amended to read:

23 123105. As used in this chapter:

24 (a) “Health care provider” means any of the following:

25 (1) A health facility licensed pursuant to Chapter 2 (commencing
26 with Section 1250) of Division 2.

27 (2) A clinic licensed pursuant to Chapter 1 (commencing with
28 Section 1200) of Division 2.

29 (3) A home health agency licensed pursuant to Chapter 8
30 (commencing with Section 1725) of Division 2.

31 (4) A physician and surgeon licensed pursuant to Chapter 5
32 (commencing with Section 2000) of Division 2 of the Business
33 and Professions Code or pursuant to the Osteopathic Act.

34 (5) A podiatrist licensed pursuant to Article 22 (commencing
35 with Section 2460) of Chapter 5 of Division 2 of the Business and
36 Professions Code.

37 (6) A dentist licensed pursuant to Chapter 4 (commencing with
38 Section 1600) of Division 2 of the Business and Professions Code.

1 (7) A psychologist licensed pursuant to Chapter 6.6
2 (commencing with Section 2900) of Division 2 of the Business
3 and Professions Code.

4 (8) An optometrist licensed pursuant to Chapter 7 (commencing
5 with Section 3000) of Division 2 of the Business and Professions
6 Code.

7 (9) A chiropractor licensed pursuant to the Chiropractic Initiative
8 Act.

9 (10) A marriage and family therapist licensed pursuant to
10 Chapter 13 (commencing with Section 4980) of Division 2 of the
11 Business and Professions Code.

12 (11) A clinical social worker licensed pursuant to Chapter 14
13 (commencing with Section 4990) of Division 2 of the Business
14 and Professions Code.

15 (12) A physical therapist licensed pursuant to Chapter 5.7
16 (commencing with Section 2600) of Division 2 of the Business
17 and Professions Code.

18 (13) An occupational therapist licensed pursuant to Chapter 5.6
19 (commencing with Section 2570).

20 (14) A professional clinical counselor licensed pursuant to
21 Chapter 16 (commencing with Section 4999.10) of Division 2 of
22 the Business and Professions Code.

23 (b) “Mental health records” means patient records, or discrete
24 portions thereof, specifically relating to evaluation or treatment of
25 a mental disorder. “Mental health records” includes, but is not
26 limited to, all alcohol and drug abuse records.

27 (c) “Patient” means a patient or former patient of a health care
28 provider.

29 (d) “Patient records” means records in any form or medium
30 maintained by, or in the custody or control of, a health care
31 provider relating to the health history, diagnosis, or condition of
32 a patient, or relating to treatment provided or proposed to be
33 provided to the patient. “Patient records” includes only records
34 pertaining to the patient requesting the records or whose
35 representative requests the records. “Patient records” does not
36 include information given in confidence to a health care provider
37 by a person other than another health care provider or the patient,
38 and that material may be removed from any records prior to
39 inspection or copying under Section 123110 or 123115. “Patient

records” does not include information contained in aggregate form, such as indices, registers, or logs.

(e) “Patient’s representative” or “representative” means any of the following:

(1) A parent or guardian of a minor who is a patient.

(2) The guardian or conservator of the person of an adult patient.

(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.

(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

~~SEC. 33.~~

SEC. 34. Section 123115 of the Health and Safety Code is amended to read:

123115. (a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor’s patient records in either of the following circumstances:

(1) With respect to which the minor has a right of inspection under Section 123110.

(2) Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider’s professional relationship with the minor patient or the minor’s physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor’s records are available for inspection or copying under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.

(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date

1 of the request and explaining the health care provider's reason for
2 refusing to permit inspection or provide copies of the records,
3 including a description of the specific adverse or detrimental
4 consequences to the patient that the provider anticipates would
5 occur if inspection or copying were permitted.

6 (2) (A) The health care provider shall permit inspection by, or
7 provide copies of the mental health records to, a licensed physician
8 and surgeon, licensed psychologist, licensed marriage and family
9 therapist, licensed clinical social worker, or licensed professional
10 clinical counselor, designated by request of the patient.

11 (B) Any person registered as a marriage and family therapist
12 intern, as defined in Chapter 13 (commencing with Section 4980)
13 of Division 2 of the Business and Professions Code, may not
14 inspect the patient's mental health records or obtain copies thereof,
15 except pursuant to the direction or supervision of a licensed
16 professional specified in subdivision (g) of Section 4980.03 of the
17 Business and Professions Code. Prior to providing copies of mental
18 health records to a registered marriage and family therapist intern,
19 a receipt for those records shall be signed by the supervising
20 licensed professional.

21 (C) Any person registered as a clinical counselor intern, as
22 defined in Chapter 16 (commencing with Section 4999.10) of
23 Division 2 of the Business and Professions Code, may not inspect
24 the patient's mental health records or obtain copies thereof, except
25 pursuant to the direction or supervision of a licensed professional
26 specified in subdivision (h) of Section 4999.12 of the Business
27 and Professions Code. Prior to providing copies of mental health
28 records to a person registered as a clinical counselor intern, a
29 receipt for those records shall be signed by the supervising licensed
30 professional.

31 (D) A licensed physician and surgeon, licensed psychologist,
32 licensed marriage and family therapist, licensed clinical social
33 worker, licensed professional clinical counselor, registered
34 marriage and family therapist intern, or person registered as a
35 clinical counselor intern to whom the records are provided for
36 inspection or copying shall not permit inspection or copying by
37 the patient.

38 (3) The health care provider shall inform the patient of the
39 provider's refusal to permit him or her to inspect or obtain copies
40 of the requested records, and inform the patient of the right to

1 require the provider to permit inspection by, or provide copies to,
2 a licensed physician and surgeon, licensed psychologist, licensed
3 marriage and family therapist, licensed clinical social worker, or
4 licensed professional clinical counselor designated by written
5 authorization of the patient.

6 (4) The health care provider shall indicate in the mental health
7 records of the patient whether the request was made under
8 paragraph (2).

9 ~~SEC. 34.~~

10 *SEC. 35.* Section 124260 of the Health and Safety Code is
11 amended to read:

12 124260. (a) As used in this section:

13 (1) “Mental health treatment or counseling services” means the
14 provision of outpatient mental health treatment or counseling by
15 a professional person, as defined in paragraph (2).

16 (2) “Professional person” means any of the following:

17 (A) A person designated as a mental health professional in
18 Sections 622 to 626, inclusive, of Title 9 of the California Code
19 of Regulations.

20 (B) A marriage and family therapist, as defined in Chapter 13
21 (commencing with Section 4980) of Division 2 of the Business
22 and Professions Code.

23 (C) A licensed educational psychologist, as defined in Chapter
24 13.5 (commencing with Section 4989.10) of Division 2 of the
25 Business and Professions Code.

26 (D) A credentialed school psychologist, as described in Section
27 49424 of the Education Code.

28 (E) A clinical psychologist, as defined in Section 1316.5 of the
29 Health and Safety Code.

30 (F) A licensed clinical social worker, as defined in Chapter 14
31 (commencing with Section 4991) of Division 2 of the Business
32 and Professions Code.

33 (G) A person registered as a marriage and family therapist intern,
34 as defined in Chapter 13 (commencing with Section 4980) of
35 Division 2 of the Business and Professions Code, while working
36 under the supervision of a licensed professional specified in
37 subdivision (g) of Section 4980.03 of the Business and Professions
38 Code.

39 (H) A board certified, or board eligible, psychiatrist.

1 (I) A licensed professional clinical counselor, as defined in
2 Chapter 16 (commencing with Section 4999.10) of Division 2 of
3 the Business and Professions Code.

4 (J) A person registered as a clinical counselor intern, as defined
5 in Chapter 16 (commencing with Section 4999.10) of Division 2
6 of the Business and Professions Code, while working under the
7 supervision of a licensed professional specified in subdivision (h)
8 of Section 4999.12 of the Business and Professions Code.

9 (b) Notwithstanding any provision of law to the contrary, a
10 minor who is 12 years of age or older may consent to mental health
11 treatment or counseling services if, in the opinion of the attending
12 professional person, the minor is mature enough to participate
13 intelligently in the mental health treatment or counseling services.

14 (c) Notwithstanding any provision of law to the contrary, the
15 mental health treatment or counseling of a minor authorized by
16 this section shall include involvement of the minor's parent or
17 guardian, unless the professional person who is treating or
18 counseling the minor, after consulting with the minor, determines
19 that the involvement would be inappropriate. The professional
20 person who is treating or counseling the minor shall state in the
21 client record whether and when the person attempted to contact
22 the minor's parent or guardian, and whether the attempt to contact
23 was successful or unsuccessful, or the reason why, in the
24 professional person's opinion, it would be inappropriate to contact
25 the minor's parent or guardian.

26 (d) The minor's parent or guardian is not liable for payment for
27 mental health treatment or counseling services provided pursuant
28 to this section unless the parent or guardian participates in the
29 mental health treatment or counseling, and then only for services
30 rendered with the participation of the parent or guardian.

31 (e) This section does not authorize a minor to receive convulsive
32 therapy or psychosurgery, as defined in subdivisions (f) and (g)
33 of Section 5325 of the Welfare and Institutions Code, or
34 psychotropic drugs without the consent of the minor's parent or
35 guardian.

36 ~~SEC. 35.~~

37 *SEC. 36.* Section 10133.55 of the Insurance Code is amended
38 to read:

39 10133.55. (a) (1) Except as provided in paragraph (2), every
40 disability insurer covering hospital, medical, and surgical expenses

1 on a group basis that contracts with providers for alternative rates
2 pursuant to Section 10133 and limits payments under those policies
3 to services secured by insureds and subscribers from providers
4 charging alternative rates pursuant to these contracts, shall file
5 with the Department of Insurance, a written policy describing how
6 the insurer shall facilitate the continuity of care for new insureds
7 or enrollees receiving services during a current episode of care for
8 an acute condition from a noncontracting provider. This written
9 policy shall describe the process used to facilitate continuity of
10 care, including the assumption of care by a contracting provider.

11 (2) On or before July 1, 2002, every disability insurer covering
12 hospital, medical, and surgical expenses on a group basis that
13 contracts with providers for alternative rates pursuant to Section
14 10133 and limits payments under those policies to services secured
15 by insureds and subscribers from providers charging alternative
16 rates pursuant to these contracts, shall file with the department a
17 written policy describing how the insurer shall facilitate the
18 continuity of care for new enrollees who have been receiving
19 services for an acute, serious, or chronic mental health condition
20 from a nonparticipating mental health provider when the enrollee's
21 employer has changed policies. Every written policy shall allow
22 the new enrollee a reasonable transition period to continue his or
23 her course of treatment with the nonparticipating mental health
24 provider prior to transferring to another participating provider and
25 shall include the provision of mental health services on a timely,
26 appropriate, and medically necessary basis from the
27 nonparticipating provider. The policy may provide that the length
28 of the transition period take into account the severity of the
29 enrollee's condition and the amount of time reasonably necessary
30 to effect a safe transfer on a case-by-case basis. Nothing in this
31 paragraph shall be construed to require the insurer to accept a
32 nonparticipating mental health provider onto its panel for treatment
33 of other enrollees. For purposes of the continuing treatment of the
34 transferring enrollee, the insurer may require the nonparticipating
35 mental health provider, as a condition of the right conferred under
36 this section, to enter into the standard mental health provider
37 contract.

38 (b) Notice of the policy and information regarding how enrollees
39 may request a review under the policy shall be provided to all new
40 enrollees, except those enrollees who are not eligible as described

1 in subdivision (e). A copy of the written policy shall be provided
2 to eligible enrollees upon request. The written policy required to
3 be filed under subdivision (a) shall describe how requests to
4 continue services with an existing noncontracting provider are
5 reviewed by the insurer. The policy shall ensure that reasonable
6 consideration is given to the potential clinical effect that a change
7 of provider would have on the insured's or subscriber's treatment
8 for the acute condition.

9 (c) An insurer may require any nonparticipating provider whose
10 services are continued pursuant to the written policy to agree in
11 writing to meet the same contractual terms and conditions that are
12 imposed upon the insurer's participating providers, including
13 location within the service area, reimbursement methodologies,
14 and rates of payment. If the insurer determines that a patient's
15 health care treatment should temporarily continue with the patient's
16 existing provider or nonparticipating mental health provider, the
17 insurer shall not be liable for actions resulting solely from the
18 negligence, malpractice, or other tortious or wrongful acts arising
19 out of the provision of services by the existing provider or
20 nonparticipating mental health provider.

21 (d) Nothing in this section shall require an insurer to cover
22 services or provide benefits that are not otherwise covered under
23 the terms and conditions of the policy contract.

24 (e) The written policy shall not apply to any insured or
25 subscriber who is offered an out-of-network option, or who had
26 the option to continue with his or her previous health benefits
27 carrier or provider and instead voluntarily chose to change.

28 (f) This section shall not apply to insurer contracts that include
29 out-of-network coverage under which the insured or subscriber is
30 able to obtain services from the insured's or subscriber's existing
31 provider or nonparticipating mental health provider.

32 (g) (1) For purposes of this section, "provider" refers to a person
33 who is described in subdivision (f) of Section 900 of the Business
34 and Professions Code.

35 (2) For purposes of this section, "nonparticipating mental health
36 provider" refers to a psychiatrist, licensed psychologist, licensed
37 marriage and family therapist, licensed clinical social worker, or
38 licensed professional clinical counselor who is not part of the
39 insurer's contracted provider network.

1 (h) This section shall only apply to a group disability insurance
2 policy if it provides coverage for hospital, medical, or surgical
3 benefits.

4 ~~SEC. 36.~~

5 *SEC. 37.* Section 10176 of the Insurance Code is amended to
6 read:

7 10176. (a) In disability insurance, the policy may provide for
8 payment of medical, surgical, chiropractic, physical therapy, speech
9 pathology, audiology, acupuncture, professional mental health,
10 dental, hospital, or optometric expenses upon a reimbursement
11 basis, or for the exclusion of any of those services, and provision
12 may be made therein for payment of all or a portion of the amount
13 of charge for these services without requiring that the insured first
14 pay the expenses. The policy shall not prohibit the insured from
15 selecting any psychologist or other person who is the holder of a
16 certificate or license under Section 1000, 1634, 2050, 2472, 2553,
17 2630, 2948, 3055, or 4938 of the Business and Professions Code,
18 to perform the particular services covered under the terms of the
19 policy, the certificate holder or licensee being expressly authorized
20 by law to perform those services.

21 (b) If the insured selects any person who is a holder of a
22 certificate under Section 4938 of the Business and Professions
23 Code, a disability insurer or nonprofit hospital service plan shall
24 pay the bona fide claim of an acupuncturist holding a certificate
25 pursuant to Section 4938 of the Business and Professions Code
26 for the treatment of an insured person only if the insured's policy
27 or contract expressly includes acupuncture as a benefit and includes
28 coverage for the injury or illness treated. Unless the policy or
29 contract expressly includes acupuncture as a benefit, no person
30 who is the holder of any license or certificate set forth in this
31 section shall be paid or reimbursed under the policy for
32 acupuncture.

33 (c) The policy shall not prohibit the insured, upon referral by a
34 physician and surgeon licensed under Section 2050 of the Business
35 and Professions Code, from selecting any licensed clinical social
36 worker who is the holder of a license issued under Section 4996
37 of the Business and Professions Code, any occupational therapist
38 as specified in Section 2570.2 of the Business and Professions
39 Code, any marriage and family therapist who is the holder of a
40 license under Section 4980.50 of the Business and Professions

1 Code, or any professional clinical counselor who is the holder of
2 a license under Chapter 16 (commencing with Section 4999.10)
3 of Division 2 of the Business and Professions Code, to perform
4 the particular services covered under the terms of the policy, or
5 from selecting any speech-language pathologist or audiologist
6 licensed under Section 2532 of the Business and Professions Code
7 or any registered nurse licensed pursuant to Chapter 6
8 (commencing with Section 2700) of Division 2 of the Business
9 and Professions Code who possesses a master's degree in
10 psychiatric-mental health nursing and is listed as a
11 psychiatric-mental health nurse by the Board of Registered
12 Nursing, or any advanced practice registered nurse certified as a
13 clinical nurse specialist pursuant to Article 9 (commencing with
14 Section 2838) of Chapter 6 of Division 2 of the Business and
15 Professions Code who participates in expert clinical practice in
16 the specialty of psychiatric-mental health nursing, or any
17 respiratory care practitioner certified pursuant to Chapter 8.3
18 (commencing with Section 3700) of Division 2 of the Business
19 and Professions Code to perform services deemed necessary by
20 the referring physician and surgeon, that certificate holder, licensee
21 or otherwise regulated person, being expressly authorized by law
22 to perform the services.

23 (d) Nothing in this section shall be construed to allow any
24 certificate holder or licensee enumerated in this section to perform
25 professional mental health services beyond his or her field or fields
26 of competence as established by his or her education, training, and
27 experience.

28 (e) For the purposes of this section:

29 (1) "Marriage and family therapist" means a licensed marriage
30 and family therapist who has received specific instruction in
31 assessment, diagnosis, prognosis, and counseling, and
32 psychotherapeutic treatment of premarital, marriage, family, and
33 child relationship dysfunctions, which is equivalent to the
34 instruction required for licensure on January 1, 1981.

35 (2) "Professional clinical counselor" means a licensed
36 professional clinical counselor who has received specific
37 instruction in assessment, diagnosis, prognosis, counseling, and
38 psychotherapeutic treatment of mental and emotional disorders,
39 which is equivalent to the instruction required for licensure on
40 January 1, 2012.

1 (f) An individual disability insurance policy, which is issued,
2 renewed, or amended on or after January 1, 1988, which includes
3 mental health services coverage may not include a lifetime waiver
4 for that coverage with respect to any applicant. The lifetime waiver
5 of coverage provision shall be deemed unenforceable.

6 ~~SEC. 37.~~

7 *SEC. 38.* Section 10176.7 of the Insurance Code is amended
8 to read:

9 10176.7. (a) Disability insurance where the insurer is licensed
10 to do business in this state and which provides coverage under a
11 contract of insurance which includes California residents but which
12 may be written or issued for delivery outside of California where
13 benefits are provided within the scope of practice of a licensed
14 clinical social worker, a registered nurse licensed pursuant to
15 Chapter 6 (commencing with Section 2700) of Division 2 of the
16 Business and Professions Code who possesses a master's degree
17 in psychiatric-mental health nursing and two years of supervised
18 experience in psychiatric-mental health nursing, a marriage and
19 family therapist who is the holder of a license under Chapter 13
20 (commencing with Section 4980) of Division 2 of the Business
21 and Professions Code, a professional clinical counselor who is the
22 holder of a license under Chapter 16 (commencing with Section
23 4999.10) of Division 2 of the Business and Professions Code, or
24 a respiratory care practitioner certified pursuant to Chapter 8.3
25 (commencing with Section 3700) of Division 2 of the Business
26 and Professions Code shall not be deemed to prohibit persons
27 covered under the contract from selecting those licensees in
28 California to perform the services in California that are within the
29 terms of the contract even though the licensees are not licensed in
30 the state where the contract is written or issued for delivery.

31 (b) It is the intent of the Legislature in amending this section in
32 the 1984 portion of the 1983–84 Legislative Session that persons
33 covered by the insurance and those providers of health care
34 specified in this section who are licensed in California should be
35 entitled to the benefits provided by the insurance for services of
36 those providers rendered to those persons.

37 ~~SEC. 38.~~

38 *SEC. 39.* Section 10177 of the Insurance Code is amended to
39 read:

10177. (a) A self-insured employee welfare benefit plan may provide for payment of professional mental health expenses upon a reimbursement basis, or for the exclusion of those services, and provision may be made therein for payment of all or a portion of the amount of charge for those services without requiring that the employee first pay those expenses. The plan shall not prohibit the employee from selecting any psychologist who is the holder of a certificate issued under Section 2948 of the Business and Professions Code or, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any marriage and family therapist who is the holder of a certificate or license under Section 4980.50 of the Business and Professions Code, any professional clinical counselor who is the holder of a license under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, the certificate or license holder being expressly authorized by law to perform these services.

(b) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional services beyond his or her field or fields of competence as established by his or her education, training, and experience.

(c) For the purposes of this section:

(1) "Marriage and family therapist" shall mean a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and

1 child relationship dysfunctions, which is equivalent to the
2 instruction required for licensure on January 1, 1981.

3 (2) “Professional clinical counselor” means a licensed
4 professional clinical counselor who has received specific
5 instruction in assessment, diagnosis, prognosis, counseling, and
6 psychotherapeutic treatment of mental and emotional disorders,
7 which is equivalent to the instruction required for licensure on
8 January 1, 2012.

9 (d) A self-insured employee welfare benefit plan, which is
10 issued, renewed, or amended on or after January 1, 1988, that
11 includes mental health services coverage in nongroup contracts
12 may not include a lifetime waiver for that coverage with respect
13 to any employee. The lifetime waiver of coverage provision shall
14 be deemed unenforceable.

15 ~~SEC. 39.~~

16 *SEC. 40.* Section 10177.8 of the Insurance Code is amended
17 to read:

18 10177.8. (a) A self-insured employee welfare benefit plan
19 doing business in this state and providing coverage that includes
20 California residents but that may be written or issued for delivery
21 outside of California where benefits are provided within the scope
22 of practice of a licensed clinical social worker, a registered nurse
23 licensed pursuant to Chapter 6 (commencing with Section 2700)
24 of Division 2 of the Business and Professions Code who possesses
25 a master’s degree in psychiatric-mental health nursing and two
26 years of supervised experience in psychiatric-mental health nursing,
27 a marriage and family therapist who is the holder of a license under
28 Chapter 13 (commencing with Section 4980) of Division 2 of the
29 Business and Professions Code, or a professional clinical counselor
30 who is the holder of a license under Chapter 16 (commencing with
31 Section 4999.10) of Division 2 of the Business and Professions
32 Code, shall not be deemed to prohibit persons covered under the
33 plan from selecting those licensees in California to perform the
34 services in California that are within the terms of the contract even
35 though the licensees are not licensed in the state where the contract
36 is written or issued.

37 (b) It is the intent of the Legislature in amending this section in
38 the 1984 portion of the 1983–84 Legislative Session that persons
39 covered by the plan and those providers of health care specified
40 in this section who are licensed in California should be entitled to

1 the benefits provided by the plan for services of those providers
2 rendered to those persons.

3 ~~SEC. 40.~~

4 *SEC. 41.* Section 11165.7 of the Penal Code is amended to
5 read:

6 11165.7. (a) As used in this article, “mandated reporter” is
7 defined as any of the following:

8 (1) A teacher.

9 (2) An instructional aide.

10 (3) A teacher’s aide or teacher’s assistant employed by any
11 public or private school.

12 (4) A classified employee of any public school.

13 (5) An administrative officer or supervisor of child welfare and
14 attendance, or a certificated pupil personnel employee of any public
15 or private school.

16 (6) An administrator of a public or private day camp.

17 (7) An administrator or employee of a public or private youth
18 center, youth recreation program, or youth organization.

19 (8) An administrator or employee of a public or private
20 organization whose duties require direct contact and supervision
21 of children.

22 (9) Any employee of a county office of education or the State
23 Department of Education, whose duties bring the employee into
24 contact with children on a regular basis.

25 (10) A licensee, an administrator, or an employee of a licensed
26 community care or child day care facility.

27 (11) A Head Start program teacher.

28 (12) A licensing worker or licensing evaluator employed by a
29 licensing agency as defined in Section 11165.11.

30 (13) A public assistance worker.

31 (14) An employee of a child care institution, including, but not
32 limited to, foster parents, group home personnel, and personnel of
33 residential care facilities.

34 (15) A social worker, probation officer, or parole officer.

35 (16) An employee of a school district police or security
36 department.

37 (17) Any person who is an administrator or presenter of, or a
38 counselor in, a child abuse prevention program in any public or
39 private school.

1 (18) A district attorney investigator, inspector, or local child
2 support agency caseworker unless the investigator, inspector, or
3 caseworker is working with an attorney appointed pursuant to
4 Section 317 of the Welfare and Institutions Code to represent a
5 minor.

6 (19) A peace officer, as defined in Chapter 4.5 (commencing
7 with Section 830) of Title 3 of Part 2, who is not otherwise
8 described in this section.

9 (20) A firefighter, except for volunteer firefighters.

10 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
11 resident, intern, podiatrist, chiropractor, licensed nurse, dental
12 hygienist, optometrist, marriage and family therapist, clinical social
13 worker, professional clinical counselor, or any other person who
14 is currently licensed under Division 2 (commencing with Section
15 500) of the Business and Professions Code.

16 (22) Any emergency medical technician I or II, paramedic, or
17 other person certified pursuant to Division 2.5 (commencing with
18 Section 1797) of the Health and Safety Code.

19 (23) A psychological assistant registered pursuant to Section
20 2913 of the Business and Professions Code.

21 (24) A marriage and family therapist trainee, as defined in
22 subdivision (c) of Section 4980.03 of the Business and Professions
23 Code.

24 (25) An unlicensed marriage and family therapist intern
25 registered under Section 4980.44 of the Business and Professions
26 Code.

27 (26) A state or county public health employee who treats a minor
28 for venereal disease or any other condition.

29 (27) A coroner.

30 (28) A medical examiner, or any other person who performs
31 autopsies.

32 (29) A commercial film and photographic print processor, as
33 specified in subdivision (e) of Section 11166. As used in this
34 article, “commercial film and photographic print processor” means
35 any person who develops exposed photographic film into negatives,
36 slides, or prints, or who makes prints from negatives or slides, for
37 compensation. The term includes any employee of such a person;
38 it does not include a person who develops film or makes prints for
39 a public agency.

1 (30) A child visitation monitor. As used in this article, “child
2 visitation monitor” means any person who, for financial
3 compensation, acts as monitor of a visit between a child and any
4 other person when the monitoring of that visit has been ordered
5 by a court of law.

6 (31) An animal control officer or humane society officer. For
7 the purposes of this article, the following terms have the following
8 meanings:

9 (A) “Animal control officer” means any person employed by a
10 city, county, or city and county for the purpose of enforcing animal
11 control laws or regulations.

12 (B) “Humane society officer” means any person appointed or
13 employed by a public or private entity as a humane officer who is
14 qualified pursuant to Section 14502 or 14503 of the Corporations
15 Code.

16 (32) A clergy member, as specified in subdivision (d) of Section
17 11166. As used in this article, “clergy member” means a priest,
18 minister, rabbi, religious practitioner, or similar functionary of a
19 church, temple, or recognized denomination or organization.

20 (33) Any custodian of records of a clergy member, as specified
21 in this section and subdivision (d) of Section 11166.

22 (34) Any employee of any police department, county sheriff’s
23 department, county probation department, or county welfare
24 department.

25 (35) An employee or volunteer of a Court Appointed Special
26 Advocate program, as defined in Rule 1424 of the California Rules
27 of Court.

28 (36) A custodial officer as defined in Section 831.5.

29 (37) Any person providing services to a minor child under
30 Section 12300 or 12300.1 of the Welfare and Institutions Code.

31 (38) An alcohol and drug counselor. As used in this article, an
32 “alcohol and drug counselor” is a person providing counseling,
33 therapy, or other clinical services for a state licensed or certified
34 drug, alcohol, or drug and alcohol treatment program. However,
35 alcohol or drug abuse, or both alcohol and drug abuse, is not in
36 and of itself a sufficient basis for reporting child abuse or neglect.

37 (39) A clinical counselor trainee, as defined in subdivision (g)
38 of Section 4999.12 of the Business and Professions Code.

39 (40) A clinical counselor intern registered under Section 4999.42
40 of the Business and Professions Code.

1 (b) Except as provided in paragraph (35) of subdivision (a),
2 volunteers of public or private organizations whose duties require
3 direct contact with and supervision of children are not mandated
4 reporters but are encouraged to obtain training in the identification
5 and reporting of child abuse and neglect and are further encouraged
6 to report known or suspected instances of child abuse or neglect
7 to an agency specified in Section 11165.9.

8 (c) Employers are strongly encouraged to provide their
9 employees who are mandated reporters with training in the duties
10 imposed by this article. This training shall include training in child
11 abuse and neglect identification and training in child abuse and
12 neglect reporting. Whether or not employers provide their
13 employees with training in child abuse and neglect identification
14 and reporting, the employers shall provide their employees who
15 are mandated reporters with the statement required pursuant to
16 subdivision (a) of Section 11166.5.

17 (d) School districts that do not train their employees specified
18 in subdivision (a) in the duties of mandated reporters under the
19 child abuse reporting laws shall report to the State Department of
20 Education the reasons why this training is not provided.

21 (e) Unless otherwise specifically provided, the absence of
22 training shall not excuse a mandated reporter from the duties
23 imposed by this article.

24 (f) Public and private organizations are encouraged to provide
25 their volunteers whose duties require direct contact with and
26 supervision of children with training in the identification and
27 reporting of child abuse and neglect.

28 ~~SEC. 41.~~

29 *SEC. 42.* Section 4514 of the Welfare and Institutions Code,
30 as amended by Section 100 of Chapter 178 of the Statutes of 2010,
31 is amended to read:

32 4514. All information and records obtained in the course of
33 providing intake, assessment, and services under Division 4.1
34 (commencing with Section 4400), Division 4.5 (commencing with
35 Section 4500), Division 6 (commencing with Section 6000), or
36 Division 7 (commencing with Section 7100) to persons with
37 developmental disabilities shall be confidential. Information and
38 records obtained in the course of providing similar services to
39 either voluntary or involuntary recipients prior to 1969 shall also

1 be confidential. Information and records shall be disclosed only
2 in any of the following cases:

3 (a) In communications between qualified professional persons,
4 whether employed by a regional center or state developmental
5 center, or not, in the provision of intake, assessment, and services
6 or appropriate referrals. The consent of the person with a
7 developmental disability, or his or her guardian or conservator,
8 shall be obtained before information or records may be disclosed
9 by regional center or state developmental center personnel to a
10 professional not employed by the regional center or state
11 developmental center, or a program not vendored by a regional
12 center or state developmental center.

13 (b) When the person with a developmental disability, who has
14 the capacity to give informed consent, designates individuals to
15 whom information or records may be released, except that nothing
16 in this chapter shall be construed to compel a physician and
17 surgeon, psychologist, social worker, marriage and family therapist,
18 professional clinical counselor, nurse, attorney, or other
19 professional to reveal information that has been given to him or
20 her in confidence by a family member of the person unless a valid
21 release has been executed by that family member.

22 (c) To the extent necessary for a claim, or for a claim or
23 application to be made on behalf of a person with a developmental
24 disability for aid, insurance, government benefit, or medical
25 assistance to which he or she may be entitled.

26 (d) If the person with a developmental disability is a minor,
27 ward, or conservatee, and his or her parent, guardian, conservator,
28 or limited conservator with access to confidential records,
29 designates, in writing, persons to whom records or information
30 may be disclosed, except that nothing in this chapter shall be
31 construed to compel a physician and surgeon, psychologist, social
32 worker, marriage and family therapist, professional clinical
33 counselor, nurse, attorney, or other professional to reveal
34 information that has been given to him or her in confidence by a
35 family member of the person unless a valid release has been
36 executed by that family member.

37 (e) For research, provided that the Director of Developmental
38 Services designates by regulation rules for the conduct of research
39 and requires the research to be first reviewed by the appropriate
40 institutional review board or boards. These rules shall include, but

1 need not be limited to, the requirement that all researchers shall
2 sign an oath of confidentiality as follows:

3
4 “ _____
5 Date

6
7 As a condition of doing research concerning persons with
8 developmental disabilities who have received services from ____
9 (fill in the facility, agency or person), I, ____, agree to obtain the
10 prior informed consent of persons who have received services to
11 the maximum degree possible as determined by the appropriate
12 institutional review board or boards for protection of human
13 subjects reviewing my research, or the person’s parent, guardian,
14 or conservator, and I further agree not to divulge any information
15 obtained in the course of the research to unauthorized persons, and
16 not to publish or otherwise make public any information regarding
17 persons who have received services so those persons who received
18 services are identifiable.

19 I recognize that the unauthorized release of confidential
20 information may make me subject to a civil action under provisions
21 of the Welfare and Institutions Code.

22
23 _____”
24 Signed

25
26 (f) To the courts, as necessary to the administration of justice.

27 (g) To governmental law enforcement agencies as needed for
28 the protection of federal and state elective constitutional officers
29 and their families.

30 (h) To the Senate Committee on Rules or the Assembly
31 Committee on Rules for the purposes of legislative investigation
32 authorized by the committee.

33 (i) To the courts and designated parties as part of a regional
34 center report or assessment in compliance with a statutory or
35 regulatory requirement, including, but not limited to, Section
36 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the
37 Penal Code, Section 6502 of the Welfare and Institutions Code,
38 and Section 56557 of Title 17 of the California Code of
39 Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician and surgeon, psychologist, social worker, marriage and family therapist, professional clinical counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) Between persons who are trained and qualified to serve on “multidisciplinary personnel” teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

1 (m) When a person with a developmental disability dies from
2 any cause, natural or otherwise, while hospitalized in a state
3 developmental center, the State Department of Developmental
4 Services, the physician and surgeon in charge of the client, or the
5 professional in charge of the facility or his or her designee, shall
6 release information and records to the coroner. The State
7 Department of Developmental Services, the physician and surgeon
8 in charge of the client, or the professional in charge of the facility
9 or his or her designee, shall not release any notes, summaries,
10 transcripts, tapes, or records of conversations between the resident
11 and health professional personnel of the hospital relating to the
12 personal life of the resident that is not related to the diagnosis and
13 treatment of the resident's physical condition. Any information
14 released to the coroner pursuant to this section shall remain
15 confidential and shall be sealed and shall not be made part of the
16 public record.

17 (n) To authorized licensing personnel who are employed by, or
18 who are authorized representatives of, the State Department of
19 Health Services, and who are licensed or registered health
20 professionals, and to authorized legal staff or special investigators
21 who are peace officers who are employed by, or who are authorized
22 representatives of, the State Department of Social Services, as
23 necessary to the performance of their duties to inspect, license,
24 and investigate health facilities and community care facilities, and
25 to ensure that the standards of care and services provided in these
26 facilities are adequate and appropriate and to ascertain compliance
27 with the rules and regulations to which the facility is subject. The
28 confidential information shall remain confidential except for
29 purposes of inspection, licensing, or investigation pursuant to
30 Chapter 2 (commencing with Section 1250) and Chapter 3
31 (commencing with Section 1500) of Division 2 of the Health and
32 Safety Code, or a criminal, civil, or administrative proceeding in
33 relation thereto. The confidential information may be used by the
34 State Department of Health Services or the State Department of
35 Social Services in a criminal, civil, or administrative proceeding.
36 The confidential information shall be available only to the judge
37 or hearing officer and to the parties to the case. Names which are
38 confidential shall be listed in attachments separate to the general
39 pleadings. The confidential information shall be sealed after the
40 conclusion of the criminal, civil, or administrative hearings, and

1 shall not subsequently be released except in accordance with this
2 subdivision. If the confidential information does not result in a
3 criminal, civil, or administrative proceeding, it shall be sealed after
4 the State Department of Health Services or the State Department
5 of Social Services decides that no further action will be taken in
6 the matter of suspected licensing violations. Except as otherwise
7 provided in this subdivision, confidential information in the
8 possession of the State Department of Health Services or the State
9 Department of Social Services shall not contain the name of the
10 person with a developmental disability.

11 (o) To any board which licenses and certifies professionals in
12 the fields of mental health and developmental disabilities pursuant
13 to state law, when the Director of Developmental Services has
14 reasonable cause to believe that there has occurred a violation of
15 any provision of law subject to the jurisdiction of a board and the
16 records are relevant to the violation. The information shall be
17 sealed after a decision is reached in the matter of the suspected
18 violation, and shall not subsequently be released except in
19 accordance with this subdivision. Confidential information in the
20 possession of the board shall not contain the name of the person
21 with a developmental disability.

22 (p) To governmental law enforcement agencies by the director
23 of a regional center or state developmental center, or his or her
24 designee, when (1) the person with a developmental disability has
25 been reported lost or missing or (2) there is probable cause to
26 believe that a person with a developmental disability has
27 committed, or has been the victim of, murder, manslaughter,
28 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,
29 assault with the intent to commit a felony, arson, extortion, rape,
30 forcible sodomy, forcible oral copulation, assault or battery, or
31 unlawful possession of a weapon, as provided in any provision
32 listed in Section 16590 of the Penal Code.

33 This subdivision shall be limited solely to information directly
34 relating to the factual circumstances of the commission of the
35 enumerated offenses and shall not include any information relating
36 to the mental state of the patient or the circumstances of his or her
37 treatment unless relevant to the crime involved.

38 This subdivision shall not be construed as an exception to, or in
39 any other way affecting, the provisions of Article 7 (commencing
40 with Section 1010) of Chapter 4 of Division 8 of the Evidence

1 Code, or Chapter 11 (commencing with Section 15600) and
2 Chapter 13 (commencing with Section 15750) of Part 3 of Division
3 9.

4 (q) To the Division of Juvenile Facilities and Department of
5 Corrections and Rehabilitation or any component thereof, as
6 necessary to the administration of justice.

7 (r) To an agency mandated to investigate a report of abuse filed
8 pursuant to either Section 11164 of the Penal Code or Section
9 15630 of the Welfare and Institutions Code for the purposes of
10 either a mandated or voluntary report or when those agencies
11 request information in the course of conducting their investigation.

12 (s) When a person with developmental disabilities, or the parent,
13 guardian, or conservator of a person with developmental disabilities
14 who lacks capacity to consent, fails to grant or deny a request by
15 a regional center or state developmental center to release
16 information or records relating to the person with developmental
17 disabilities within a reasonable period of time, the director of the
18 regional or developmental center, or his or her designee, may
19 release information or records on behalf of that person provided
20 both of the following conditions are met:

21 (1) Release of the information or records is deemed necessary
22 to protect the person's health, safety, or welfare.

23 (2) The person, or the person's parent, guardian, or conservator,
24 has been advised annually in writing of the policy of the regional
25 center or state developmental center for release of confidential
26 client information or records when the person with developmental
27 disabilities, or the person's parent, guardian, or conservator, fails
28 to respond to a request for release of the information or records
29 within a reasonable period of time. A statement of policy contained
30 in the client's individual program plan shall be deemed to comply
31 with the notice requirement of this paragraph.

32 (t) (1) When an employee is served with a notice of adverse
33 action, as defined in Section 19570 of the Government Code, the
34 following information and records may be released:

35 (A) All information and records that the appointing authority
36 relied upon in issuing the notice of adverse action.

37 (B) All other information and records that are relevant to the
38 adverse action, or that would constitute relevant evidence as
39 defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the

1 employee's legal representative to return to the appointing authority
2 all records provided to them under this subdivision, including, but
3 not limited to, all records and documents from any source
4 containing confidential information protected by this section, and
5 all copies of those records and documents, within 10 days of the
6 date that the adverse action becomes final, except for the actual
7 records and documents that are no longer in the possession of the
8 employee or the employee's legal representatives because they
9 were submitted to the administrative tribunal as a component of
10 an appeal from the adverse action.

11 (3) Individual identifiers, including, but not limited to, names,
12 social security numbers, and hospital numbers, that are not
13 necessary for the prosecution or defense of the adverse action,
14 shall not be disclosed.

15 (4) All records, documents, or other materials containing
16 confidential information protected by this section that have been
17 submitted or otherwise disclosed to the administrative agency or
18 other person as a component of an appeal from an adverse action
19 shall, upon proper motion by the appointing authority to the
20 administrative tribunal, be placed under administrative seal and
21 shall not, thereafter, be subject to disclosure to any person or entity
22 except upon the issuance of an order of a court of competent
23 jurisdiction.

24 (5) For purposes of this subdivision, an adverse action becomes
25 final when the employee fails to answer within the time specified
26 in Section 19575 of the Government Code, or, after filing an
27 answer, withdraws the appeal, or, upon exhaustion of the
28 administrative appeal or of the judicial review remedies as
29 otherwise provided by law.

30 ~~SEC. 42.~~

31 *SEC. 43.* Section 5256.1 of the Welfare and Institutions Code
32 is amended to read:

33 5256.1. The certification review hearing shall be conducted
34 by either a court-appointed commissioner or a referee, or a
35 certification review hearing officer. The certification review
36 hearing officer shall be either a state qualified administrative law
37 hearing officer, a physician and surgeon, a licensed psychologist,
38 a registered nurse, a lawyer, a certified law student, a licensed
39 clinical social worker, a licensed marriage and family therapist,
40 or a licensed professional clinical counselor. Licensed

1 psychologists, licensed clinical social workers, licensed marriage
2 and family therapists, licensed professional clinical counselors,
3 and registered nurses who serve as certification review hearing
4 officers shall have had a minimum of five years' experience in
5 mental health. Certification review hearing officers shall be selected
6 from a list of eligible persons unanimously approved by a panel
7 composed of the local mental health director, the county public
8 defender, and the county counsel or district attorney designated
9 by the county board of supervisors. No employee of the county
10 mental health program or of any facility designated by the county
11 and approved by the State Department of Mental Health as a
12 facility for 72-hour treatment and evaluation may serve as a
13 certification review hearing officer.

14 The location of the certification review hearing shall be
15 compatible with, and least disruptive of, the treatment being
16 provided to the person certified. In addition, hearings conducted
17 by certification review officers shall be conducted at an appropriate
18 place at the facility where the person certified is receiving
19 treatment.

20 ~~SEC. 43.~~

21 *SEC. 44.* Section 5328 of the Welfare and Institutions Code is
22 amended to read:

23 5328. All information and records obtained in the course of
24 providing services under Division 4 (commencing with Section
25 4000), Division 4.1 (commencing with Section 4400), Division
26 4.5 (commencing with Section 4500), Division 5 (commencing
27 with Section 5000), Division 6 (commencing with Section 6000),
28 or Division 7 (commencing with Section 7100), to either voluntary
29 or involuntary recipients of services shall be confidential.
30 Information and records obtained in the course of providing similar
31 services to either voluntary or involuntary recipients prior to 1969
32 shall also be confidential. Information and records shall be
33 disclosed only in any of the following cases:

34 (a) In communications between qualified professional persons
35 in the provision of services or appropriate referrals, or in the course
36 of conservatorship proceedings. The consent of the patient, or his
37 or her guardian or conservator, shall be obtained before information
38 or records may be disclosed by a professional person employed
39 by a facility to a professional person not employed by the facility

1 who does not have the medical or psychological responsibility for
2 the patient's care.

3 (b) When the patient, with the approval of the physician and
4 surgeon, licensed psychologist, social worker with a master's
5 degree in social work, licensed marriage and family therapist, or
6 licensed professional clinical counselor who is in charge of the
7 patient, designates persons to whom information or records may
8 be released, except that nothing in this article shall be construed
9 to compel a physician and surgeon, licensed psychologist, social
10 worker with a master's degree in social work, licensed marriage
11 and family therapist, licensed professional clinical counselor, nurse,
12 attorney, or other professional person to reveal information that
13 has been given to him or her in confidence by members of a
14 patient's family. Nothing in this subdivision shall be construed to
15 authorize a licensed marriage and family therapist or a licensed
16 professional clinical counselor to provide services or to be in charge
17 of a patient's care beyond his or her lawful scope of practice.

18 (c) To the extent necessary for a recipient to make a claim, or
19 for a claim to be made on behalf of a recipient for aid, insurance,
20 or medical assistance to which he or she may be entitled.

21 (d) If the recipient of services is a minor, ward, or conservatee,
22 and his or her parent, guardian, guardian ad litem, or conservator
23 designates, in writing, persons to whom records or information
24 may be disclosed, except that nothing in this article shall be
25 construed to compel a physician and surgeon, licensed
26 psychologist, social worker with a master's degree in social work,
27 licensed marriage and family therapist, licensed professional
28 clinical counselor, nurse, attorney, or other professional person to
29 reveal information that has been given to him or her in confidence
30 by members of a patient's family.

31 (e) For research, provided that the Director of Mental Health
32 or the Director of Developmental Services designates by regulation,
33 rules for the conduct of research and requires the research to be
34 first reviewed by the appropriate institutional review board or
35 boards. The rules shall include, but need not be limited to, the
36 requirement that all researchers shall sign an oath of confidentiality
37 as follows:

38
39
40

Date

1 As a condition of doing research concerning persons who have
2 received services from ____ (fill in the facility, agency or person),
3 I, ____, agree to obtain the prior informed consent of such persons
4 who have received services to the maximum degree possible as
5 determined by the appropriate institutional review board or boards
6 for protection of human subjects reviewing my research, and I
7 further agree not to divulge any information obtained in the course
8 of such research to unauthorized persons, and not to publish or
9 otherwise make public any information regarding persons who
10 have received services such that the person who received services
11 is identifiable.

12 I recognize that the unauthorized release of confidential
13 information may make me subject to a civil action under provisions
14 of the Welfare and Institutions Code.

15 (f) To the courts, as necessary to the administration of justice.

16 (g) To governmental law enforcement agencies as needed for
17 the protection of federal and state elective constitutional officers
18 and their families.

19 (h) To the Senate Committee on Rules or the Assembly
20 Committee on Rules for the purposes of legislative investigation
21 authorized by the committee.

22 (i) If the recipient of services who applies for life or disability
23 insurance designates in writing the insurer to which records or
24 information may be disclosed.

25 (j) To the attorney for the patient in any and all proceedings
26 upon presentation of a release of information signed by the patient,
27 except that when the patient is unable to sign the release, the staff
28 of the facility, upon satisfying itself of the identity of the attorney,
29 and of the fact that the attorney does represent the interests of the
30 patient, may release all information and records relating to the
31 patient except that nothing in this article shall be construed to
32 compel a physician and surgeon, licensed psychologist, social
33 worker with a master's degree in social work, licensed marriage
34 and family therapist, licensed professional clinical counselor, nurse,
35 attorney, or other professional person to reveal information that
36 has been given to him or her in confidence by members of a
37 patient's family.

38 (k) Upon written agreement by a person previously confined in
39 or otherwise treated by a facility, the professional person in charge
40 of the facility or his or her designee may release any information,

except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) (1) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the provision of child welfare services or the investigation, prevention, identification, management, or treatment of child abuse or neglect pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9. Information obtained pursuant to this subdivision shall not be used in any criminal or delinquency proceeding. Nothing in this subdivision shall prohibit evidence identical to that contained within the records from being admissible in a criminal or delinquency proceeding, if the evidence is derived solely from means other than this subdivision, as permitted by law.

(2) As used in this subdivision, "child welfare services" means those services that are directed at preventing child abuse or neglect.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Section 4070.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person

1 designated by a law enforcement agency, pursuant to Sections
2 5152.1 and 5250.1.

3 (q) If the patient gives his or her consent, information
4 specifically pertaining to the existence of genetically handicapping
5 conditions, as defined in Section 125135 of the Health and Safety
6 Code, may be released to qualified professional persons for
7 purposes of genetic counseling for blood relatives upon request of
8 the blood relative. For purposes of this subdivision, “qualified
9 professional persons” means those persons with the qualifications
10 necessary to carry out the genetic counseling duties under this
11 subdivision as determined by the genetic disease unit established
12 in the State Department of Health Care Services under Section
13 125000 of the Health and Safety Code. If the patient does not
14 respond or cannot respond to a request for permission to release
15 information pursuant to this subdivision after reasonable attempts
16 have been made over a two-week period to get a response, the
17 information may be released upon request of the blood relative.

18 (r) When the patient, in the opinion of his or her psychotherapist,
19 presents a serious danger of violence to a reasonably foreseeable
20 victim or victims, then any of the information or records specified
21 in this section may be released to that person or persons and to
22 law enforcement agencies and county child welfare agencies as
23 the psychotherapist determines is needed for the protection of that
24 person or persons. For purposes of this subdivision,
25 “psychotherapist” means anyone so defined within Section 1010
26 of the Evidence Code.

27 (s) (1) To the designated officer of an emergency response
28 employee, and from that designated officer to an emergency
29 response employee regarding possible exposure to HIV or AIDS,
30 but only to the extent necessary to comply with provisions of the
31 federal Ryan White Comprehensive AIDS Resources Emergency
32 Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

33 (2) For purposes of this subdivision, “designated officer” and
34 “emergency response employee” have the same meaning as these
35 terms are used in the *federal* Ryan White Comprehensive AIDS
36 Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C.
37 Sec. 201).

38 (3) The designated officer shall be subject to the confidentiality
39 requirements specified in Section 120980, and may be personally
40 liable for unauthorized release of any identifying information about

1 the HIV results. Further, the designated officer shall inform the
2 exposed emergency response employee that the employee is also
3 subject to the confidentiality requirements specified in Section
4 120980, and may be personally liable for unauthorized release of
5 any identifying information about the HIV test results.

6 (t) (1) To a law enforcement officer who personally lodges with
7 a facility, as defined in paragraph (2), a warrant of arrest or an
8 abstract of such a warrant showing that the person sought is wanted
9 for a serious felony, as defined in Section 1192.7 of the Penal
10 Code, or a violent felony, as defined in Section 667.5 of the Penal
11 Code. The information sought and released shall be limited to
12 whether or not the person named in the arrest warrant is presently
13 confined in the facility. This paragraph shall be implemented with
14 minimum disruption to health facility operations and patients, in
15 accordance with Section 5212. If the law enforcement officer is
16 informed that the person named in the warrant is confined in the
17 facility, the officer may not enter the facility to arrest the person
18 without obtaining a valid search warrant or the permission of staff
19 of the facility.

20 (2) For purposes of paragraph (1), a facility means all of the
21 following:

22 (A) A state hospital, as defined in Section 4001.

23 (B) A general acute care hospital, as defined in subdivision (a)
24 of Section 1250 of the Health and Safety Code, solely with regard
25 to information pertaining to a mentally disordered person subject
26 to this section.

27 (C) An acute psychiatric hospital, as defined in subdivision (b)
28 of Section 1250 of the Health and Safety Code.

29 (D) A psychiatric health facility, as described in Section 1250.2
30 of the Health and Safety Code.

31 (E) A mental health rehabilitation center, as described in Section
32 5675.

33 (F) A skilled nursing facility with a special treatment program
34 for chronically mentally disordered patients, as described in
35 Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the
36 California Code of Regulations.

37 (u) Between persons who are trained and qualified to serve on
38 multidisciplinary personnel teams pursuant to Section 15610.55,
39 15753.5, or 15761. The information and records sought to be
40 disclosed shall be relevant to the prevention, identification,

1 management, or treatment of an abused elder or dependent adult
2 pursuant to Chapter 13 (commencing with Section 15750) of Part
3 3 of Division 9.

4 (v) The amendment of subdivision (d) enacted at the 1970
5 Regular Session of the Legislature does not constitute a change
6 in, but is declaratory of, the preexisting law.

7 (w) This section shall not be limited by Section 5150.05 or 5332.

8 (x) (1) When an employee is served with a notice of adverse
9 action, as defined in Section 19570 of the Government Code, the
10 following information and records may be released:

11 (A) All information and records that the appointing authority
12 relied upon in issuing the notice of adverse action.

13 (B) All other information and records that are relevant to the
14 adverse action, or that would constitute relevant evidence as
15 defined in Section 210 of the Evidence Code.

16 (C) The information described in subparagraphs (A) and (B)
17 may be released only if both of the following conditions are met:

18 (i) The appointing authority has provided written notice to the
19 consumer and the consumer's legal representative or, if the
20 consumer has no legal representative or if the legal representative
21 is a state agency, to the clients' rights advocate, and the consumer,
22 the consumer's legal representative, or the clients' rights advocate
23 has not objected in writing to the appointing authority within five
24 business days of receipt of the notice, or the appointing authority,
25 upon review of the objection has determined that the circumstances
26 on which the adverse action is based are egregious or threaten the
27 health, safety, or life of the consumer or other consumers and
28 without the information the adverse action could not be taken.

29 (ii) The appointing authority, the person against whom the
30 adverse action has been taken, and the person's representative, if
31 any, have entered into a stipulation that does all of the following:

32 (I) Prohibits the parties from disclosing or using the information
33 or records for any purpose other than the proceedings for which
34 the information or records were requested or provided.

35 (II) Requires the employee and the employee's legal
36 representative to return to the appointing authority all records
37 provided to them under this subdivision, including, but not limited
38 to, all records and documents from any source containing
39 confidential information protected by this section, and all copies
40 of those records and documents, within 10 days of the date that

1 the adverse action becomes final except for the actual records and
2 documents or copies thereof that are no longer in the possession
3 of the employee or the employee's legal representative because
4 they were submitted to the administrative tribunal as a component
5 of an appeal from the adverse action.

6 (III) Requires the parties to submit the stipulation to the
7 administrative tribunal with jurisdiction over the adverse action
8 at the earliest possible opportunity.

9 (2) For the purposes of this subdivision, the State Personnel
10 Board may, prior to any appeal from adverse action being filed
11 with it, issue a protective order, upon application by the appointing
12 authority, for the limited purpose of prohibiting the parties from
13 disclosing or using information or records for any purpose other
14 than the proceeding for which the information or records were
15 requested or provided, and to require the employee or the
16 employee's legal representative to return to the appointing authority
17 all records provided to them under this subdivision, including, but
18 not limited to, all records and documents from any source
19 containing confidential information protected by this section, and
20 all copies of those records and documents, within 10 days of the
21 date that the adverse action becomes final, except for the actual
22 records and documents or copies thereof that are no longer in the
23 possession of the employee or the employee's legal representatives
24 because they were submitted to the administrative tribunal as a
25 component of an appeal from the adverse action.

26 (3) Individual identifiers, including, but not limited to, names,
27 social security numbers, and hospital numbers, that are not
28 necessary for the prosecution or defense of the adverse action,
29 shall not be disclosed.

30 (4) All records, documents, or other materials containing
31 confidential information protected by this section that have been
32 submitted or otherwise disclosed to the administrative agency or
33 other person as a component of an appeal from an adverse action
34 shall, upon proper motion by the appointing authority to the
35 administrative tribunal, be placed under administrative seal and
36 shall not, thereafter, be subject to disclosure to any person or entity
37 except upon the issuance of an order of a court of competent
38 jurisdiction.

39 (5) For purposes of this subdivision, an adverse action becomes
40 final when the employee fails to answer within the time specified

1 in Section 19575 of the Government Code, or, after filing an
2 answer, withdraws the appeal, or, upon exhaustion of the
3 administrative appeal or of the judicial review remedies as
4 otherwise provided by law.

5 ~~SEC. 44.~~

6 *SEC. 45.* Section 5328.04 of the Welfare and Institutions Code
7 is amended to read:

8 5328.04. (a) Notwithstanding Section 5328, information and
9 records made confidential under that section may be disclosed to
10 a county social worker, a probation officer, or any other person
11 who is legally authorized to have custody or care of a minor, for
12 the purpose of coordinating health care services and medical
13 treatment, as defined in subdivision (b) of Section 56.103 of the
14 Civil Code, mental health services, or services for developmental
15 disabilities, for the minor.

16 (b) Information disclosed under subdivision (a) shall not be
17 further disclosed by the recipient unless the disclosure is for the
18 purpose of coordinating health care services and medical treatment,
19 or mental health or developmental disability services, for the minor
20 and only to a person who would otherwise be able to obtain the
21 information under subdivision (a) or any other provision of law.

22 (c) Information disclosed pursuant to this section shall not be
23 admitted into evidence in any criminal or delinquency proceeding
24 against the minor. Nothing in this subdivision shall prohibit
25 identical evidence from being admissible in a criminal proceeding
26 if that evidence is derived solely from lawful means other than
27 this section and is permitted by law.

28 (d) Nothing in this section shall be construed to compel a
29 physician and surgeon, licensed psychologist, social worker with
30 a master's degree in social work, licensed marriage and family
31 therapist, licensed professional clinical counselor, nurse, attorney,
32 or other professional person to reveal information, including notes,
33 that has been given to him or her in confidence by the minor or
34 members of the minor's family.

35 (e) The disclosure of information pursuant to this section is not
36 intended to limit disclosure of information when that disclosure
37 is otherwise required by law.

38 (f) Nothing in this section shall be construed to expand the
39 authority of a social worker, probation officer, or custodial
40 caregiver beyond the authority provided under existing law to a

1 parent or a patient representative regarding access to confidential
2 information.

3 (g) As used in this section, “minor” means a minor taken into
4 temporary custody or for whom a petition has been filed with the
5 court, or who has been adjudged a dependent child or ward of
6 juvenile court pursuant to Section 300 or 601.

7 (h) Information and records that may be disclosed pursuant to
8 this section do not include psychotherapy notes, as defined in
9 Section 164.501 of Title 45 of the Code of Federal Regulations.

10 ~~SEC. 45.~~

11 *SEC. 46.* Section 5696.5 of the Welfare and Institutions Code
12 is amended to read:

13 5696.5. Prior to the opening of a facility, the board of directors
14 shall establish written program standards and policies and
15 procedures, approved by the Division of Juvenile Facilities that
16 address and include, but are not limited to, the following:

17 (a) A staffing number and pattern that meets the special
18 behavior, supervision, treatment, health, and educational needs of
19 the population described in this chapter. Staff shall be qualified to
20 provide intensive treatment and services and shall include, at a
21 minimum:

22 (1) A project or clinical director, a psychiatrist or psychologist,
23 a social worker, a registered nurse, and a recreation or occupational
24 therapist.

25 (2) A pediatrician and a dentist, and a licensed marriage and
26 family therapist or a licensed professional clinical counselor, or
27 both of those professionals, on an as-needed basis.

28 (3) Educational staff in sufficient number and with the
29 qualifications needed to meet the population served.

30 (4) Child care staff in sufficient numbers and with the
31 qualifications needed to meet the special needs of the population.

32 (b) Programming to meet the needs of all wards admitted,
33 including, but not limited to, all of the following:

34 (1) Physical examinations on admission and ongoing health
35 care.

36 (2) Appropriate and closely monitored use of all behavioral
37 management techniques.

38 (3) The establishment of written, individual treatment and
39 educational plans and goals for each ward within 10 days of
40 admission and which are updated at least quarterly.

1 (4) Written discharge planning that addresses each ward's
2 continued treatment, educational, and supervision needs.

3 (5) Regular, written progress records regarding the care and
4 treatment of each ward.

5 (6) Regular and structured treatment of all wards, including,
6 but not limited to, individual, group and family therapy,
7 psychological testing, medication, and occupational, or recreational
8 therapy.

9 (7) Access to neurological testing and laboratory work as
10 needed.

11 (8) The opportunity for regular family contact and involvement.

12 (9) A periodic review of the continued need for treatment within
13 the facility.

14 (10) Educational programming, including special education as
15 needed.

16 ~~SEC. 46.~~

17 *SEC. 47.* Section 5751 of the Welfare and Institutions Code is
18 amended to read:

19 5751. (a) Regulations pertaining to the qualifications of
20 directors of local mental health services shall be administered in
21 accordance with Section 5607. These standards may include the
22 maintenance of records of service which shall be reported to the
23 State Department of Mental Health in a manner and at times as it
24 may specify.

25 (b) Regulations pertaining to the position of director of local
26 mental health services, where the local director is other than the
27 local health officer or medical administrator of the county hospitals,
28 shall require that the director be a psychiatrist, psychologist,
29 clinical social worker, marriage and family therapist, professional
30 clinical counselor, registered nurse, or hospital administrator, who
31 meets standards of education and experience established by the
32 Director of Mental Health. Where the director is not a psychiatrist,
33 the program shall have a psychiatrist licensed to practice medicine
34 in this state and who shall provide to patients medical care and
35 services as authorized by Section 2051 of the Business and
36 Professions Code.

37 (c) The regulations shall be adopted in accordance with the
38 Administrative Procedure Act (Chapter 3.5 (commencing with
39 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
40 Code).

1 ~~SEC. 47.~~

2 *SEC. 48.* Section 5751.2 of the Welfare and Institutions Code
3 is amended to read:

4 5751.2. (a) Except as provided in this section, persons
5 employed or under contract to provide mental health services
6 pursuant to this part shall be subject to all applicable requirements
7 of law regarding professional licensure, and no person shall be
8 employed in local mental health programs pursuant to this part to
9 provide services for which a license is required, unless the person
10 possesses a valid license.

11 (b) Persons employed as psychologists and clinical social
12 workers, while continuing in their employment in the same class
13 as of January 1, 1979, in the same program or facility, including
14 those persons on authorized leave, but not including intermittent
15 personnel, shall be exempt from the requirements of subdivision
16 (a).

17 (c) While registered with the licensing board of jurisdiction for
18 the purpose of acquiring the experience required for licensure,
19 persons employed or under contract to provide mental health
20 services pursuant to this part as clinical social workers, marriage
21 and family therapists, or professional clinical counselors shall be
22 exempt from subdivision (a). Registration shall be subject to
23 regulations adopted by the appropriate licensing board.

24 (d) The requirements of subdivision (a) shall be waived by the
25 department for persons employed or under contract to provide
26 mental health services pursuant to this part as psychologists who
27 are gaining the experience required for licensure. A waiver granted
28 under this subdivision may not exceed five years from the date of
29 employment by, or contract with, a local mental health program
30 for persons in the profession of psychology.

31 (e) The requirements of subdivision (a) shall be waived by the
32 department for persons who have been recruited for employment
33 from outside this state as psychologists, clinical social workers,
34 marriage and family therapists, or professional clinical counselors
35 and whose experience is sufficient to gain admission to a licensing
36 examination. A waiver granted under this subdivision may not
37 exceed three years from the date of employment by, or contract
38 with, a local mental health program for persons in these four
39 professions who are recruited from outside this state.

1 ~~SEC. 48.~~

2 *SEC. 49.* Section 15610.37 of the Welfare and Institutions
3 Code is amended to read:

4 15610.37. “Health practitioner” means a physician and surgeon,
5 psychiatrist, psychologist, dentist, resident, intern, podiatrist,
6 chiropractor, registered nurse, dental hygienist, licensed clinical
7 social worker or associate clinical social worker, marriage and
8 family therapist, licensed professional clinical counselor, or any
9 other person who is currently licensed under Division 2
10 (commencing with Section 500) of the Business and Professions
11 Code, any emergency medical technician I or II, paramedic, or
12 person certified pursuant to Division 2.5 (commencing with Section
13 1797) of the Health and Safety Code, a psychological assistant
14 registered pursuant to Section 2913 of the Business and Professions
15 Code, a marriage and family therapist trainee, as defined in
16 subdivision (c) of Section 4980.03 of the Business and Professions
17 Code, an unlicensed marriage and family therapist intern registered
18 under Section 4980.44 of the Business and Professions Code, a
19 clinical counselor trainee, as defined in subdivision (g) of Section
20 4999.12 of the Business and Professions Code, a clinical counselor
21 intern registered under Section 4999.42 of the Business and
22 Professions Code, a state or county public health or social service
23 employee who treats an elder or a dependent adult for any
24 condition, or a coroner.

25 ~~SEC. 49.~~

26 *SEC. 50.* No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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